Washington, Tuesday, January 5, 1960

### Title 3—THE PRESIDENT

Executive Order 10857

DETERMINING THE TERMINATION OF CERTAIN FEDERAL FUNCTIONS IN ALASKA AND DELEGATING TO THE SECRETARY OF THE INTERIOR THE AUTHORITY OF THE PRESIDENT TO TRANSFER TO ALASKA PROPERTY OWNED OR HELD BY THE UNITED STATES IN CONNECTION WITH SUCH FUNCTIONS

WHEREAS section 6(e) of the act of July 7, 1958, 72 Stat. 339, as amended, provides that the administration and management of the fish and wildlife resources of Alaska shall be transferred to the State of Alaska on the first day of the first calendar year following the expiration of ninety calendar days after the Secretary of the Interior certifies to the Congress that the Alaska State Legislature has made adequate provision for the administration, management, and conservation of such resources in the broad national interest; and

WHEREAS the Secretary of the Interior made such certification to the Congress on April 27, 1959; and

WHEREAS section 45(a) of the Alaska Omnibus Act (73 Stat. 152) provides that if the President determines that any function performed by the Federal Government in Alaska has been terminated by the Federal Government and that performance of such function or substantially the same function has been or will be assumed by the State of Alaska, the President may, until July 1, 1964, in his discretion, transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with such function; and

WHEREAS it appears that it would be in the public interest to delegate to the Secretary of the Interior, to the extent hereinafter indicated, the authority vested in the President by section 45(a) of the Alaska Omnibus Act:

NOW, THEREFORE, by virtue of the authority vested in me by section 45(a) of the Alaska Omnibus Act (73 Stat. 152) and section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. It is hereby determined that the functions performed by the United States in Alaska pursuant to the Alaska game law of July 1, 1943, 57 Stat. 301, the act of June 26, 1906, 34 Stat. 478, the act of June 6, 1924, 43 Stat. 465, and the acts amending or supplementing such acts, will terminate on December 31, 1959, and that the same functions or substantially the same functions will be assumed by the State of Alaska.

SEC. 2. There is hereby delegated to the Secretary of the Interior, effective January 1, 1960, the authority vested in the President by section 45(a) of the Alaska Omnibus Act to transfer and convey to the State of Alaska, without reimbursement, any property or interest in property, real or personal, situated in Alaska which is owned or held by the United States in connection with the functions described in section 1 hereof.

SEC. 3. The Secretary of the Interior is hereby authorized to redelegate to (1) the Assistant Secretary for Fish and Wildlife, (2) the Commissioner of Fish and Wildlife, (3) the Directors of the Bureaus of Commercial Fisheries and Sport Fisheries and Wildlife, and (4) the Regional Directors, Alaska Region, of the Bureaus of Commercial Fisheries and Sport Fisheries and Wildlife all or any part of the authority delegated to the Secretary of the Interior by section 2 hereof.

Sec. 4. All transfers and conveyances made under or pursuant to this order shall be made in accordance with such policies, conditions, and procedures as may be prescribed by the Secretary of the Interior.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,

December 29, 1959.

[F.R. Doc. 60-92; Filed, Jan. 4, 1960; 10:12 a.m.]

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### **Limitation of Handling**

(a) Findings. (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel

oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making pro-cedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REG-ISTER (5 U.S.C. 1001-1011) because the time interventing between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of navel oranges grown in Arizona and designated part of California.

(b) Order, as amended. The provisions in paragraph (b) (1) (i) of § 914.77 (Navel Orange Regulation 177, 24 F.R. 10713) are hereby amended to read as follows:

(i) District 1: 650,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 30, 1959.

S. R. SMITH, Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 60-30; Filed, Jan. 4, 1960; 8:48 a.m.]

### Title 6—AGRICULTURAL **CREDIT**

Chapter III—Farmers Home Administration, Department of Agriculture

> SUBCHAPTER D-SOIL AND WATER **CONSERVATION LOANS**

> > [FHA Instruction 442.1]

### PART 351-POLICIES AND **AUTHORITIES**

### Transmittal of Repayments to Holders of Insured Notes

Section 351.2(d) (2) (iv) in Title 6, Code of Federal Regulations (24 F.R. 7752), is hereby amended to read as follows:

§ 351.2 Loans to individuals.

- (d) Rates and terms. \* \* \*
- (2) Repayments. \* \* \*
- (iv) Payments, other than amounts owed the insurance fund, made on an insured Soil and Water Conservation

loan will be credited to the borrower's account as of the date the payment is remitted to a holder of the note. Payments made during a calendar quarter will be remitted to the holder of the note at the end of the quarter, except that payments received in the Finance Office during a calendar quarter will be remitted to the holder when they aggregate \$200 or more.

(Sec. 6, 50 Stat. 870, sec. 10(a)7, 68 Stat. 734; 16 U.S.C. 590w, 16 U.S.C. 590x-3; Order of Acting Sec. of Agr., 19 F.R. 74, 22 F.R. 8188)

Dated: December 28, 1959.

. M. H. HOLLIDAY, Jr., Acting Administrator, Farmers Home Administration.

[F.R. Doc. 60-18; Filed, Jan. 4, 1960; 8:46 a.m.l

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

SUBCHAPTER B-LOANS, PURCHASES, AND OTHER OPERATIONS

[C.C.C. Farm Storage Facility Loan Bulletin, Rev. 1, Amdt. 2]

### PART 474—FARM STORAGE **FACILITIES**

### Subpart—Farm Storage Facility Loan Program

ELIGIBLE STRUCTURES: DISBURSEMENT OF LOAN

The purpose of this amendment is to amend the bulletin to provide that unless approved by the Board of Directors, a facility shall not be financed with loan proceeds if it has been purchased and erected prior to the date of application and that unless approved by the Board of Directors, a loan will not be made to refinance, repair, remodel or maintain existing facilities, or for the purchase of secondhand facilities with certain exceptions. The amendment also provides for discontinuing the disbursement of funds under the partial advance plan.

Section 474.725 (b) (1) and (c) of the bulletin (23 F.R. 9686) setting forth the regulations governing eligible structures, and § 474.727 setting forth the regulations governing the disbursement of loans are amended to read as follows:

§ 474.725 Eligible structures.

(b) \* \* \* (1) Unless expressly authorized by the Board of Directors, the facility must be either (i) a new farm storage facility of movable or immovable type (including any addition to an existing immovable facility) which meets the requirements for eligible storage under the CCC price support loan programs and which, prior to date of application for the loan, has not been purchased or constructed; or (ii) a used farm storage facility which CCC has acquired by foreclosure or other means under this program. A downpayment will not be deemed to be a purchase which will preclude consideration of an

application filed thereafter. Similarly, the installation of the foundation will not be deemed to be construction.

(c) Unless approved by the Board of Directors, a loan will not be available (1) for the refinancing, repair, remodeling, or maintenance of existing facilities, or (2) for the purchase of secondhand facilities (except as specifically provided in paragraph (b) (1) (ii) of this section). A loan will not be available to provide storage facilities for commodities which the borrower intends to purchase or store for others.

### § 474.727 Disbursement of loan.

Disbursement will be made in full when construction of the facility has been completed and the facility has been inspected and approved by the county committee or the designated employee of the county committee, except that disbursement of the loan proceeds will not be made in any case until the borrower furnishes satisfactory evidence of the payment of all debts on the facility in excess of the amount of the

Issued at Washington, D.C., this 29th day of December 1959.

> CLARENCE D. PALMBY. Acting Executive Vice President, Commodity Credit Corporation.

[F.R. Doc. 60-31; Filed, Jan. 4, 1960; 8:48 a.m.]

### Title 16—COMMERCIAL **PRACTICES**

Chapter I—Federal Trade Commission [Docket 7502]

### PART 13-DIGEST OF CEASE AND **DESIST ORDERS**

Allchem Manufacturing Co., Inc., et al.

Subpart-Advertising falsely or misleadingly: § 13.170 Qualities or properties of product or service; § 13.195 Safety.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Allchem Manufacturing Co., Inc., et al., New York, N.Y., Docket 7502, Nov. 7, 1959]

In the Matter of Allchem Manufacturing Co., Inc., a Corporation, and Mark Schrier, Individually and as Officer of Said Corporation, and Charles Goldberg, Individually

This proceeding was heard by a hearing examiner on the complaint of the Commission charging New York City sellers of their "Kill Flame" fire extinguisher to door-to-door salesmen and others for resale, with representing falsely on containers and in advertising that said product was safe and nontoxic when used to extinguish a fire, and that it was effective in extinguishing all types of fires.

Having failed to serve answer or to appear at the hearing, respondents were held in default. The hearing examiner thereupon made his initial decision including findings, conclusion, and order to cease and desist which-following its denial of a respondent's request that the matter be reopened—the Commission adopted on November 7 as its own decision.

The order to cease and desist is as follows:

It is ordered, That respondents Allchem Manufacturing Co., Inc., a corporation, and its officers, and Mark Schrier, individually and as officer of said corporation, and Charles Goldberg. individually, and respondents' representatives, agents, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of the fire extinguisher "Kill-Flame," or any other product of substantially similar composition, whether sold under the same name or under any other name, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Representing, directly or by implication, that said product is safe, nontoxic, or otherwise non-injurious to health, when used to extinguish a fire.

2. Representing that said product is effective in extinguishing all types of fires, or otherwise misrepresenting the fire extinguishing capabilities of said product.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is further ordered, That the respondents, Allchem Manufacturing Co., Inc., a corporation, Mark Schrier, individually and as an officer of said corporation, and Charles Goldberg, individually, shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist contained in said initial decision.

Issued: November 6, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH,

Secretary.

[F.R. Doc. 60-10; Filed, Jan. 4, 1960; 8:46 a.m.]

[Docket 7529 c.o.]

### PART 13-DIGEST OF CEASE AND DESIST ORDERS

### J. A. Deknatel & Son, Inc., et al.

Subpart-Advertising faslely or misleadingly: § 13.235 Source or origin: Place: Foreign product as domestic Subpart-Neglecting, unfairly or deceptively, to make material disclosure: § 13.1900 Source or origin: Foreign product as domestic.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, J. A. Deknatel & Son, Inc., et al., Queens Village, N.Y., Docket 7529, Nov. 11, 1959]

In the Matter of J. A. Deknatel & Son, Inc., a Corporation, and Florence K. Choffel, David E. Golieb, and Leonard D. Kurtz, Individually and as Officers of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging distributors in Queens Village, N.Y., with advertising falsely as made in the U.S.A., beads used for making identification bracelets and necklaces for newborn babies in hospitals, and with selling the beads without revealing that the pink and blue beads, comprising a substantial portion of the finished products, were made in Japan.

After acceptance of an agreement containing a consent order, the hearing examiner made his initial decision and order to cease and desist which became on November 11 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents J. A. Deknatel & Son, Inc., a corporation, and its officers, and Florence K. Choffel, David E. Golieb and Leonard D. Kurtz. individually and as officers of said corporation, and respondents' agents, representatives and employees, directly or through any corporate or other device, in connection with the offering for sale, sale, or distribution of beads or any other product in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

1. Offering for sale or selling any product, the whole or substantial part of which is of foreign origin, without affirmatively and clearly disclosing thereon, or if such method of disclosure is not possible, to affirmatively and clearly disclose in immediate connection therewith, the country of origin of said product or part thereof.

2. Representing, directly or indirectly, in any manner that any product, the whole or any substantial part of which is of foreign origin, is of domestic origin.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: November 10, 1959.

By the Commission.

[SEAL] ROBERT M. PARRISH, Secretary.

[F.R. Doc. 60-11; Filed, Jan. 4, 1960; 8:46 a.m.]

[Docket 73731

### PART 13-DIGEST OF CEASE AND **DESIST ORDERS**

### Modern Rug Co., Inc., et al.

§ 13.1212 Formal regulatory and statu-

tory requirements: Wool Products Labeling Act. Subpart-Neglecting, unfairly or deceptively, to make material disclosure: § 13.1845 Composition: Wool Products Labeling Act.

production of the production o

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended, secs. 2-5, 54 Stat. 1128-1130; 15 U.S.C. 45, 68-68(c)) [Cease and desist order, Modern Rug Company, Inc., et al., New Bedford, Mass., Docket 7373, Nov. 11, 1959]

In the Matter of Modern Rug Company, Inc., a Corporation, and Morris Lefkowitz, Individually, and as Officer of Said Corporation

This proceeding was heard by a hearing examiner on the complaint of the Commission charging manufacturers in New Bedford, Mass., with violating the Wool Products Labeling Act by failing to label woolen interlining materials with fiber content information.

Following hearings in due course, the hearing examiner made his initial decision, including findings, conclusions, and order to cease and desist, which became on November 11 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Modern Rug Company, Inc., a corporation, and its officers, and Morris Lefkowitz, individually, and as officer of said corporation, and respondents' representatives, agents or employees, directly or through any corporate or other device, in connection with the introduction or manufacture for introduction into commerce. or the offering for sale, sale, transportation or distribution in commerce, as "commerce" is defined in the Federal Trade Commission Act and the Wool Products Labeling Act of 1939, of interlining materials or other wool products, as such products are defined in and subject to the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Failing to securely affix to or place on each such product a stamp, tag, label or other means of identification showing in a clear and conspicuous manner:

(a) The percentage of the total fiber weight of such wool product, exclusive of ornamentation not exceeding five per centum of said total fiber weight, of (1) wool, (2) reprocessed wool, (3) reused wool, (4) each fiber other than wool where said percentages by weight of such fiber is five per centum or more, and (5) the aggregate of all other fibers:

(b) The maximum percentages of the total weight of such wool product of any non-fibrous loading, filling, or adulterating matter:

(c) The name or the registered identification number of the manufacturer of such wool product or of one or more persons engaged in introducing such wool product into commerce, or in the offering for sale, sale, transportation, distribution or delivery for shipment thereof in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939.

By "Decision of the Commission", etc., Subpart-Misbranding or mislabeling: report of compliance was required as follows:

It is ordered, That the above-named respondents shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: November 10, 1959.

By the Commission.

[SEAL]

ROBERT M. PARRISH, Secretary.

[F.R. Doc. 60-12; Filed, Jan. 4, 1960; 8:46 a.m.]

1Docket 7484 c.o.1

### PART 13—DIGEST OF CEASE AND DESIST ORDERS

### Worth Clothes, Inc., et al.

Subpart—Advertising falsely or misleadingly: § 13.155 Prices: Exaggerated as regular and customary; forced or sacrifice sales. Subpart—Misrepresenting oneself and goods—Prices: § 13.1805 Exaggerated as regular and customary; § 13.1813 Forced or sacrifice sales.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45) [Cease and desist order, Worth Clothes, Inc., et al., New York, N.Y., Docket 7484, November 10, 1959]

In the Matter of Worth Clothes, Inc., a Corporation, and Leon Lewis, Morris Lewis, and David Lewis, Individually and as Officers of Said Corporation, and Abraham H. Lewis, an Individual

This proceeding was heard by a hearing examiner on the complaint of the Commission charging New York City distributors of wearing apparel through two subsidiaries which operated retail stores in Peoria, Ill., and Akron, Ohio, respectively, with false advertising in newspapers by such statements as that "\$90,000 Stock of New Apparel" was "Sacrificed"; and by misrepresenting the customary retail price of suits through use of the abbreviation "Reg." in connection with amounts set out.

After acceptance of an agreement containing consent order, the hearing examiner made his initial decision and order to cease and desist which became on November 10 the decision of the Commission.

The order to cease and desist is as follows:

It is ordered, That respondents Worth Clothes, Inc., a corporation, and its officers, and Leon Lewis, Morris Lewis and David Lewis, as officers of said corporation, and Abraham H. Lewis, an individual, and respondents' agents. representatives and employees, directly or through any corporate or other device, in connection with the advertising, offering for sale, sale or distribution of wearing apparel or other merchandise in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly:

1. That the usual and customary retail price of a stock of merchandise is any

It is ordered, That the above-named amount which is in excess of the price spondents shall, within sixty (60) days at which such stock of merchandise is ter service upon them of this order, usually and customarily sold at retail:

2. That any amount is respondents' usual and customary retail price of merchandise when it is in excess of the price at which said merchandise has been customarily and usually sold by respondents in the recent, regular course of their business.

It is further ordered, That the complaint herein, insofar as it relates to respondents Leon Lewis, Morris Lewis and David Lewis, individually, be, and the same hereby is, dismissed without prejudice to the right of the Commission to take such action in the future as the facts may then warrant.

By "Decision of the Commission", etc., report of compliance was required as follows:

It is ordered, That respondents Worth Clothes, Inc., a corporation, and Leon Lewis, Morris Lewis, and David Lewis, & officers of said corporation, and Abraham H. Lewis, an individual, shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which they have complied with the order to cease and desist.

Issued: November 10, 1959.

By the Commission. .

[SEAL]

Robert M. Parrish, Secretary.

[F.R. Doc. 60-13; Filed, Jan. 4, 1960; 8:46 a.m.]

### Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER C-DRUGS

PART 141 c—CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

PART 146c — CERTIFICATION OF CHLORTETRACYCLINE (OR TETRACYCLINE) AND CHLORTETRACYCLINE- (OR TETRACYCLINE-) CONTAINING DRUGS

### Tetracycline-Amphotericin B Preparations

Under the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended; sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 357, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (22 F.R. 1045, 23 F.R. 9500), the regulations for tests and methods of assay and certification of antibiotic and antibiotic-containing drugs (21 CFR Parts 141c, 146c) are amended as follows:

1. Part 141c is amended by adding thereto the following new section:

§ 141c.257 · Tetracycline-amphotericin B for oral syrup; tetracycline-amphotericin B for oral drops.

(a) Potency—(1) Tetracycline content. Proceed as directed in § 141c.236 (a) (1). Its content of tetracycline is satisfactory if it contains not less than 85 percent of the number of milligrams that it is represented to contain.

(2) Amphotericin B content. Reconstitute the powder as directed in the labeling of the drug. Transfer an appropriate aliquot to a blending jar containing 150 milliliters of dimethyl sulfoxide. Blend for 2 minutes in a highspeed blender and then dilute an aliquot with sufficient dimethyl sulfoxide to give a concentration of 20  $\mu$ g. per milliliter (estimated). Further dilute this solution with 0.2 M phosphate buffer, pH 10.5 to give a concentration of 1.0  $\mu$ g. per milliliter. Proceed as directed in paragraph (c) of this section. Its content of amphotericin B is satisfactory if it contains not less than 85 percent of the number of milligrams that it is represented to contain.

(b) Moisture. Proceed as directed in § 141a.5(a) or § 141a.26(e) of this chapter.

(c) Amphotericin B used in making the powder—(1) Potency—(1) Plate assay. Use the amphotericin B standard as the standard of comparison and proceed as directed in § 141c.224 (b) (1) (i) through (b) (1) (viii), except that:

(ii) Working standard. The amphotericin B standard is stored under a nitrogen seal in the presence of a desicant at  $-15^{\circ}$  C. to  $-20^{\circ}$  C. Dry approximately 30 milligrams of the standard, using the method described in § 141a.5(a) of this chapter. Dissolve a weighed portion of the dried standard in sufficient dimethyl sulfoxide to give a stock solution containing 1,000  $\mu$ g. per milliliter. This solution should be used for 1 day only.

(iii) Buffer. Use 0.2 M phosphate buffer, pH 10.5, with the following composition: Dipotassium phosphate, 35 grams; 10 N NaOH, 2 milliliters. Make to 1 liter using distilled water.

(iv) Preparation of sample. Dissolve the sample in sufficient dimethyl sulf-oxide to give a convenient stock solution. Further dilute with dimethyl sulf-oxide to a concentration of 20  $\mu$ g. per milliliter (estimated). Remove an aliquot and dilute to a concentration of 1.0  $\mu$ g. per milliliter (estimated) using 0.2 M phosphate buffer, pH 10.5.

(v) Standard curve. Dilute the working stock solution with dimethyl sulfoxide to give concentrations of 39.2, 28.0, 20.0, 14.2, and 10.0 µg. per milliliter, respectively. Dilute one volume of each of these solutions with 19 volumes of phosphate buffer, pH 10.5, to give final concentrations of 1.96, 1.4, 1.0, 0.71, and 0.5 micrograms per milliliter. The 1.0 microgram per milliliter solution is the reference concentration.

(2) Turbidimetric assay. Proceed as directed in § 141c.224(b) (1) (ix) with the following exceptions:

(i) Culture media. Use ingredients that conform to the standards, if any, prescribed by the U.S.P. or N.F.

(a) Make yeast-beef agar for carrying . the organism as follows:

Peptone \_\_\_\_\_ 6.0 grams. Yeast extract\_\_\_\_\_ 3.0 grams. Beef extract\_\_\_\_\_ 1.5 grams. Dextrose\_\_\_\_\_ 1.0 gram. Agar \_\_\_\_\_ 15.0 grams.
Distilled water to make\_ 1,000 milliliters. pH 6.6 after sterilization.

(b) Make yeast-beef broth for preparing an inoculum of the test organism:

Beef extract\_\_\_\_\_\_ 1.5 grams. Yeast extract\_\_\_\_\_ 6.5 grams. Peptone \_\_\_\_\_ 5.0 grams. Tryptone \_\_\_\_\_ 10.0 grams. Glucose \_\_\_\_\_\_ 11.0 grams.
Sodium chloride \_\_\_\_\_\_ 3.5 grams.
Dipotassium phosphate 3.68 grams. Monopotassium phos- 1.32 grams. phate.
Distilled water to make\_\_ 1,000 milliliters.

pH 6.6 after sterilization.

#### (c) Make yeast-beef assay broth:

Beef extract\_\_\_\_\_ 1.5 grams. Teast extract\_\_\_\_\_ 1.5 grams. Peptone \_\_\_\_\_ 5.0 grams. \_\_\_\_\_ 11.0 grams. Glucose \_\_ phate

Distilled water to make\_\_ 1,000 milliliters. pH 6.6 after steriliza-

In lieu of preparing the media from the individual ingredients as specified, they may be prepared from a dehydrated mixture which, when reconstituted with distilled water, has the same composition as such media. Minor modifications of the specified individual ingredients are permissible if the resulting media possess growth-promoting properties at least equal to the media described.

(d) Working standard and standard solutions. Use the working standard described in paragraph (c) (1) (ii) of this section. Dissolve in dimethyl sulfoxide to obtain a concentration of 2 milligrams per milliliter. Further dilute to obtain a concentration of 30  $\mu$ g. per milliliter, using 25 percent dimethyl sulfoxide (1 part dimethyl sulfoxide plus 3 parts distilled water). Use 1 percent potassium phosphate buffer, pH 6.0, and dilute to a concentration of 1 µg. per milliliter. Further dilute this solution with distilled water and prepare the standard curve containing concentrations of 0, 0.02, 0.03, 0.04, 0.05, 0.06, 0.07, 0.08, and  $0.10 \mu g$ . per tube. Add 1.0 milliliter of each concentration in each of 6 sterile 20 millimeter x 150 millimeter test tubes.

(e) Preparation of sample. Prepare the sample to be tested, using the same procedure as described for the standard solutions, obtaining 6 tubes each containing 0.05  $\mu$ g. per tube.

(f) Preparation of test organism. The test organism is Saccharomyces mellis (DA Number M59), which is maintained on slants of agar described in subdivision (2) (i) (a) of this paragraph. Prepare the daily inoculum by transferring the culture from a stock slant to 100 milliliters of the broth described in subparagraph (2)(i)(b) of this paragraph and incubate for 16 hours to 18 hours at 30° C., with constant shaking.

(g) Incubate all standard and sample tubes at 30° C, with constant shaking for 3 hours to 5 hours.

(2) Toxicity. Administer orally, by means of a cannula or other suitable device, to each of 5 mice, within the weight range of 18 to 25 grams, 0.4 milliliter of a suspension of the drug containing 50 milligrams per milliliter in 0.5 percent gum acacia solution. If no animal dies within 48 hours, the sample is nontoxic. If one or more animals die within 48 hours, repeat the test with 5 unused mice weighing 20 grams ( $\pm 0.5$  gram) each: if all animals survive the repeat test the sample is nontoxic.

(3) Moisture. Proceed as directed in § 141a.5(a) of this chapter.

(4) pH. Using a 3.0 percent aqueous suspension, proceed as directed in

§ 141a.5(b) of this chapter.

(5) Identity. Accurately weigh 50.0 milligrams of the sample into a dry 50-milliliter volumetric flask. Add exactly 5 milliliters of dimethyl sulfoxide and dissolve. Make to mark with methanol and mix thoroughly. Pipet 4 milliliters of this solution into a 50-milliliter volumetric flask. Add methanol to the mark and mix thoroughly. The sample has absorption peaks at identical wavelengths with that of the standard (272, 282, 295, 362, 381, and 405  $m\mu$ ).

(6) Amphotericin A content—(i) Amphotericin A. On a semimicrobalance, weigh accurately about 5 milligrams of an amphotericin A reference. standard into a dry 50-milliliter volumetric flask. Add exactly 5.0 milliliters of dimethyl sulfoxide and dissolve. Make to mark with methanol and mix thoroughly. Pipet 4.0 milliliters of this solution into a 50-milliliter volumetric flask. Add methanol to mark and mix thoroughly.

(ii) Amphotericin В. Accurately weigh about 50.0 milligrams of an amphotericin B working standard into a dry 50-milliliter volumetric flask and proceed as directed in subdivision (i) of this subparagraph.

(iii) Sample. Use 50.0 milligrams of the sample to be tested, and proceed as directed in subdivision (i) of this subparagraph. The standards should be

used for 1 day only.

(iv) Blank. Pipet 5.0 milliliters of dimethyl sulfoxide into a 50-milliliter volumetric flask. Make to mark with methanol and mix. Pipet 4.0 milliliters of this solution into a 50-milliliter vol-umetric flask. Make to mark with methanol and mix thoroughly.

(v) Procedure. Use a suitable quartz spectrophotometer and 1-centimeter silica cells. Adjust the instrument to zero with the blank solution. Measure the absorbancies of the solutions of standard A, standard B, and the sample at 304 m $\mu$  and at 282 m $\mu$ . Calculate the absorptivity of each standard at both wavelengths.

 $[(B \times S_2) - (b \times S_1)] \times 625$ 

Percent amphoteric A =  $\frac{1}{\text{Weight of sample in grams} \times [(B \times a) - (b \times A)]}$ 

 $A = E_{1 \text{ cm}}^{1\%}$  of A standard at 282 m $\mu$ .

 $B = E_{1 \text{ cm.}}^{1\%}$  of B standard at 282 m $\mu$ .

 $a=E_{1 \text{ cm.}}^{12}$  of A standard at 304 m $\mu$ .

 $b=E_{1 \text{ cm.}}^{1\%}$  of B standard at 304 m $\mu$ .  $S_1$ =absorbance of sample at 282 m $\mu$ .

 $S_2$  = absorbance of sample at 304 m $\mu$ .

2. Part 146c is amended by adding the following new section:

#### § 146c.257 Tetracycline-amphotericin B for oral syrup; tetracycline-amphotericin B for oral drops.

Tetracycline-amphotericin B for oral syrup and tetracycline-amphotericin B for oral drops conform to all requirements and procedures prescribed by § 146c.205 for tetracycline powder, except § 146c.205(f) and except that:

(a) When reconstituted as directed in the labeling, each milliliter of the oral syrup shall contain a quantity of tetracycline equivalent to not less than 25 milligrams of tetracycline hydrochloride and not less than 5 milligrams of amphotericin B; and each milliliter of the oral drops shall contain a quantity of tetracycline equivalent to not less than 100 milligrams of tetracycline hydrochloride and not less than 20 milligrams of amphotericin B. The amphotericin B used is produced by the growth of Streptomyces nodosus. It is a yellow to orange powder. It is insoluble in water (neutral pH), anhydrous alcohols, esters,

ethers, benzene, and toluene. It is soluble in dimethylformamide and dimethyl sulfoxide. Its potency is not less than 750  $\mu$ g. per milligram on an anhydrous basis. It contains not more than 10 percent of amphotericin A. It is nontoxic. Its pH in a 3 percent aqueous suspension is not less than 6.0 and not more than 8.0. Its moisture content is not more than 5 percent. It exhibits absorption maxima at 362, 381, and 405  $m\mu$ when dissolved in dimethyl sulfoxide and diluted with absolute methanol.

(b) Its moisture content is not more than 2.5 percent.

(c) Each package shall bear on its label or labeling as hereinafter indicated the following:

(1) On the outside wrapper or container and the immediate container the total number of grams of tetracycline (expressed in terms of equivalency of tetracycline hydrochloride) and the total number of milligrams of amphotericin B contained therein; the number of milligrams of tetracycline (expressed in terms of equivalency of tetracycline hydrochloride) and the number of milligrams of amphotericin B per milliliter when reconstituted as directed in the labeling; and the statement "Caution: Federal law prohibits dispensing without prescription." The expiration date of the drug shall be 18 months.

(2) On the circular or other labeling within or attached to the package, adequate directions and warnings for its use by practitioners licensed by law to administer such drug.

(d) In addition to complying with the requirements of § 146c.205(d), a person who requests certification of a batch shall submit with his request a statement showing the batch mark and (unless they were previously submitted) the results and date of the latest tests and assays of the amphotericin B used in making the batch for potency, toxicity, pH, moisture, identity, and amphotericin A content. He shall also submit in connection with his request a sample consisting of not less than 6 immediate containers of the batch and (unless it was previously submitted) a sample consisting of 10 packages, each containing approximately equal portions of not less than 300 milligrams of the amphotericin B used in making the batch.

(e) The fees for the services rendered with respect to the samples submitted in accordance with the requirements of paragraph (d) of this section shall be:

(1) \$5.00 for each immediate con-

tainer in the sample of the batch.

(2) \$4.00 for each immediate container of the amphotericin B used in making the batch.

Notice and public procedure are not necessary prerequisites to the promulgation of this order, and I so find, since it was drawn in collaboration with interested members of the affected industry and since it would be against public interest to delay providing for tests and methods of assay and certification of the antibiotic drugs covered by this order.

Effective date. This order shall become effective on the date of its publication in the Federal Register, since both the public and the affected industry will benefit by the earliest effective date, and I so find.

(Sec. 701, 52 Stat. 1055, as amended; 21 U.S.C. 371. Interprets or applies 59 Stat. 463, as amended; 21 U.S.C. 357)

Dated: December 24, 1959.

[SEAL] GEO. P. LARRICK, Commissioner of Food and Drugs.

[F.R. Doc. 60-16; Filed, Jan. 4, 1960; 8:46 a.m.]

### Title 26—INTERNAL REVENUE, • 1954

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A-INCOME TAX

[T.D. 6441]

### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE-CEMBER 31, 1953

### Miscellaneous Amendments

On August 27, 1959, a notice of proposed rule making regarding an amendment of the Income Tax Regulations to reflect the amendment of section 152 of the 1954 Code by section 4 of the Technical Amendments Act of 1958 (72 Stat. 1607) was published in the FEDERAL REGISTER (24 F.R. 6953). No requests for a public hearing were received. After consideration of all such relevant matter

as was presented by interested persons regarding the rules proposed, the regulations as so proposed are hereby adopted, subject to the following changes:

Paragraph 1. Paragraph (a) (2) (ii) of § 1.152-2 is revised by amending the third sentence to read as follows: "A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child is absent for less than six months in the taxable year of the taxpayer, shall be considered temporary absence due to special circumstances."

PAR. 2. Paragraph (b) of § 1.152-1 is revised.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM, Commissioner of Internal Revenue.

Approved: December 29, 1959.

DAVID A. LINDSAY,

Acting Secretary of the Treasury.

Paragraph 1. In § 1.152, section 152 (a) and (b) is amended to read as follows:

### § 1.152 Statutory provisions; dependent defined.

SEC. 152. Dependent defined—(a) General definition. For purposes of this subtitle, the term "dependent" means any of the following individuals over half of whose support, for the calendar year in which the taxable year of the taxpayer begins, was received from the taxpayer (or is treated under subsection (c) as received from the taxpayer):

section (c) as received from the taxpayer):
(1) A son or daughter of the taxpayer, or a descendant of either,

(2) A stepson or stepdaughter of the taxpayer,

(3) A brother, sister, stepbrother, or stepsister of the taxpayer,

(4) The father or mother of the taxpayer, or an ancestor of either,

(5) A stepfather or stepmother of the taxpayer,

(6) A son or daughter of a brother or sister of the taxpayer,

(7) A brother or sister of the father or mother of the taxpayer,

(8) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the taxpayer.

sister-in-law of the taxpayer,
(9) An individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who, for the taxable year of the taxpayer, has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, or

(10) An individual who-

(A) Is a descendant of a brother or sister of the father or mother of the tax-payer.
(B) For the taxable year of the taxpayer

(B) For the taxable year of the taxpayer receives institutional care required by reason of a physical or mental disability, and

(C) Before receiving such institutional care, was a member of the same household as the taxpayer.

(b) Rules relating to general definition.

For purposes of this section—
(1) The terms "brother" and "sister" include a brother or sister by the halfblood,

(2) In determining whether any of the relationships specified in subsection (a) or paragraph (1) of this subsection exists, a legally adopted child of an individual shall

be treated as a child of such individual by blood.

(3) The term "dependent" does not include any individual who is not a citizen of the United States unless such individual is a resident of the United States, of a country contiguous to the United States, of the Canal Zone, or of the Republic of Panama. The preceding sentence shall not exclude from the definition of "dependent" any child of the taxpayer—

(A) Born to him, or legally adopted by him; in the Philippine Islands before January 1, 1956, if the child is a resident of the Republic of the Philippines, and if the taxpayer was a member of the Armed Forces of the United States at the time the child was born to him or legally adopted by him, or

(B) Legally adopted by him, if, for the taxable year of the taxpayer, the child has as his principal place of abode the home of the taxpayer and is a member of the taxpayer's household, and if the taxpayer is a citizen of the United States.

(4) A payment to a wife which is includible in the gross income of the wife under section 71 or 682 shall not be treated as a payment by her husband for the support of any dependent.

(5) An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law.

[Sec. 152 as amended by sec. 2, Act of Aug. 9, 1955 (Pub. Law 333, 84th Cong., 69 Stat. 626); sec. 4, Technical Amendments Act 1958 (72 Stat. 1607)]

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PAR. 2. Paragraph (b) § 1.152-1 is revised to read as follows:

### § 1.152-1 General definition of a dependent.

(b) Section 152(a) (9) applies to any individual (other than an individual who at any time during the taxable year was the spouse, determined without regard to section 153, of the taxpayer) who lives with the taxpayer and is a member of the taxpayer's household during the entire taxable year of the taxpayer. An individual is not a member of the taxpayer's household if at any time during the taxable year of the taxpayer the relationship between such individual and the taxpayer is in violation of local law. It is not necessary under section 152(a)(9) that the dependent be related to the taxpayer. For example, foster children and children awaiting adoption may qualify as dependents. It is necessary, however, that the taxpayer both maintain and occupy the household. The taxpayer and dependent will be considered as occupying the household for such entire taxable year notwithstanding temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child or stepchild is absent for less than six months in the taxable year of the taxpayer, shall be considered temporary absence due to special circumstances. The fact that the dependent dies during the year shall not deprive the taxpayer of the deduction if the dependent lived in the household for the entire part of the year preceding his death. Likewise, the period during the

taxable year preceding the birth of an individual shall not prevent such individual from qualifying as a dependent under section 152(a) (9). Moreover, a child who actually becomes a member of the taxpayer's household during the taxable year shall not be prevented from being considered a member of such household for the entire taxable year, if the child is required to remain in a hospital for a period following its birth, and if such child would otherwise have been a member of the taxpayer's household during such period.

### § 1.152-2 [Amendment]

Par. 3. Paragraph (a) of  $\S 1.152-2$  is amended—

- (A) By deleting "(a) To qualify" and inserting in lieu thereof the following:
- (a) (1) Except as provided in subparagraph (2) of this paragraph, to qualify
- (B) By adding at the end thereof the following new subparagraph:
- (2) (i) Effective with respect to taxable years beginning after December 31, 1957, a legally adopted child of the taxpayer who lives with the taxpayer and who is a member of the taxpayer's household during the entire taxable year of the taxpayer may be claimed as a dependent if such child otherwise qualifies as a dependent and if the taxpayer is a citizen of the United States.
- (ii) Under section 152(b)(3)(B) and this subparagraph, it is necessary that the taxpayer both maintain and occupy the household. The taxpayer and his legally adopted child will be considered as occupying the household for the entire taxable year of the taxpayer notwithstanding temporary absences from the household due to special circumstances. A nonpermanent failure to occupy the common abode by reason of illness, education, business, vacation, military service, or a custody agreement under which a child is absent for less than six months in the taxable year of the taxpayer, shall be considered temporary absence due to special circumstances. The fact that a child dies during the year shall not deprive the taxpayer of the deduction if the child lived in the household for the entire part of the year preceding his death. The period during the taxable year preceding the birth of a child shall not prevent such child from qualifying as a dependent under this subparagraph. Moreover, a child who actually becomes a member of the taxpayer's household during the taxable year shall not be prevented from being considered a member of such household for the entire taxable year, if the child is required to remain in a hospital for a period following its birth and if such child would otherwise have been a member of the taxpayer's household during such period.

(iii) It is not necessary for the child to have been legally adopted for the entire taxable year of the taxpayer, provided the child lived with the taxpayer's and was a member of the taxpayer's household for the entire taxable year of the taxpayer. For example, A, a citizen of the United States who makes his in-

come tax returns on the basis of the calendar year, is employed in Brazil by an agency of the United States Government. In October 1958 he takes into his household C, a resident of Brazil who is not a citizen of the United States, for the purpose of initiating adoption proceedings. C lives with A and is a member of his household for the remainder of 1958 and for the entire calendar year 1959. On July 1, 1959, the adoption proceedings were completed and C became the legally adopted child of A. If C otherwise qualifies as a dependent, he may be claimed as a dependent by A for 1959.

[F.R. Doc. 60-24; Filed, Jan. 4, 1960; 8:48 a.m.]

#### [T.D. 6439]

### PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE-CEMBER 31, 1953

On October 28, 1959, notice of proposed rule making regarding amendments to the Income Tax Regulations under section 168 (relating to amortization of emergency facilities) of the Internal Revenue Code of 1954, to conform to section 4 of the Act of August 26, 1957 (Public Law 85-165, 71 Stat. 414) and section 9 of the Technical Amendments Act of 1958 (72 Stat. 1608) was published in the Federal Register (24 F.R. 8722). No objection to the rules proposed having been received during the 30-day period prescribed in the notice, the regulations as so published are hereby adopted.

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] DANA LATHAM, Commissioner of Internal Revenue.

Approved: December 29, 1959.

DAVID A. LINDSAY,
Acting Secretary of the Treasury.

PARAGRAPH 1. Section 1.168 is amended to read as follows:

#### § 1.168 Statutory provisions; amortization of emergency facilities.

Sec. 168. Amortization of emergency facilities.  $\bullet$   $\bullet$ 

(e) Determination of adjusted basis of emergency facility. In determining, for purposes of subsection (a) or (g), the adjusted basis of an emergency facility—

asis of an emergency facility—

(1) Certifications on or before August 22, 1957. In the case of a certificate made on or before August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority, designated by the President by Executive Order, has certified as necessary in the interest of national defense during the emergency period, and only such portion of such amount as such authority has certified as attributable to defense purposes. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a cer-

tificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations, but in no event shall such certificate have any effect unless an application therefor is filed before March 24, 1951, or before the expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition, whichever is later.

(2) Certifications after August 22, 1957. In the case of a certificate made after August 22, 1957, there shall be included only so much of the amount of the adjusted basis of such facility (computed without regard to this section) as is properly attributable to such construction, reconstruction, erection, installation, or acquisition after December 31, 1949, as the certifying authority designated by the President by Executive order, has certified is to be used—

(A) To produce new or specialized defense items or components of new or specialized defense items (as defined in paragraph (4))

during the emergency period.

(B) To provide research, developmental, or experimental services during the emergency period for the Department of Defense (or one of the component departments of such Department), or for the Atomic Energy Commission, as a part of the national defense program, or

(C) To provide primary processing for uranium ore or uranium concentrate under a program of the Atomic Energy Commission for the development of new sources of uranium ore or uranium concentrate,

and only such portion of such amount as such authority has certified is attributable to the national defense program. Such certification shall be under such regulations as may be prescribed from time to time by such certifying authority with the approval of the President. An application for a certificate must be filed at such time and in such manner as may be prescribed by such certifying authority under such regulations but in no event shall such certificate have any effect unless an application therefor is filed before the expiration of 6 months after the beginning of such construction, reconstruction, erection, or installation or the date of such acquisition. For purposes of the preceding sentence, an application which was timely filed under this subsection on or before August 22, 1957, and which was pending on such date, shall be considered to be an application timely filed under this paragraph.

(3) Separate facilities; special rule. After the completion or acquisition of any emergency facility with respect to which a certificate under paragraph (1) or (2) has been made, any expenditure (attributable to such facility and to the period after such completion or acquisition) which does not represent construction, reconstruction, erection, installation, or acquisition included in such certificate, but with respect to which a separate certificate is made under paragraph (1) or (2), shall not be applied in adjustment of the basis of such facility, but a separate basis shall be computed therefor pursuant to paragraph (1) or (2), as the case may be, as if it were a new and separate emergency facility.

facility.

(4) Definitions. For purposes of paragraph (2)—

(A) New or specialized defense item. The term "new or specialized defense item" means only an item (excluding services)—

- (i) Which is produced, or will be produced, for sale to the Department of Defense (or one of the component departments of such Department), or to the Atomic Energy Commission, for use in the national defense program, and
- (ii) For the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense features.

- (B) Component of new or specialized defense item. The term "component of a new or specialized defense item" means only an
- (i) Which is, or will become, a physical part of a new or specialized defense item, and

(ii) For the production of which existing productive facilities are unsuitable because of its newness or of its specialized defense

- (5) Limitation with respect to uranium ore or uranium concentrate processing facilities. No certificate shall be made under paragraph (2) (C) with respect to any facility unless existing facilities for processing the uranium ore or uranium concentrate. which will be processed by such facility are unsuitable because of their location.
- (i) Termination. No certificate under subsection (e) shall be made with respect to any emergency facility after December 31, 1959.
- (j) Cross reference. For special rule with respect to gain derived from the sale or exchange of property the adjusted basis of which is determined with regard to this section, see section 1238.

[Sec. 168 as amended by sec. 4, Act of Aug. 26, 1957 (Pub. Law 85-165, 71 Stat. 414); sec. 9, Technical Amendments Act 1958 (72 Stat. 1608) ]

### § 1.168-1 [Amendment]

PAR. 2. Paragraph (b) of § 1.168-1 is amended to read as follows:

(b) Generally, an amortization deduction will not be allowed with respect to an emergency facility for any taxable year unless such facility has been certified before the date of filing of the taxpayer's income tax return for such taxable year. However, this limitation does not apply in the case of a certificate made after August 22, 1957, for an emergency facility to provide primary processing for uranium ore or uranium concentrate under a program of the Atomic Energy Commission for the development of any sources of uranium ore or uranium concentrate, if application for such certificate was filed either (1) before September 2, 1958, and before the expiration of six months after the beginning of construction, reconstruction, erection, or installation or the date of acquisition of the facility, or (2) after September 1, 1958, and on or before December 2, 1958.

### § 1.168-2 [Amendment]

Par. 3. Paragraph (a) of § 1.168-2 is amended by adding at the end thereof the following: "However, if the facility is described in section 168(e)(2)(C) and an application for a certificate is filed within the period prescribed by section 9(c) of the Technical Amendments Act of 1958 (72 Stat. 1609) and paragraph (b) of § 1.168-1, the election may be made by a statement in an amended income tax return for the taxable year in which falls the first month of the 60month amortization period so elected. The statement and amended return in such case must be filed not later than 90 days after the date the certificate is made or not later than 90 days after publication of these regulations in the FEDERAL REGISTER as a Treasury decision, whichever is later. Amended income tax returns or claims for credit or refund should also be filed for other taxable years which are within such amortization period and which precede the taxable year in which the election is made. Nothing in this paragraph should be construed as extending the time specified in section 6511 within which a claim for credit or refund may be filed."

### § 1.168-4 [Amendment]

PAR. 4. Paragraph (b) of § 1.168-4 is amended by inserting the following after the second sentence: "However, if the facility is one described in section 168(e) (2) (C) and the application was filed after September 1, 1958, and on or before December 2, 1958, the preceding sentence shall not apply."

### § 1.168-5 [Amendment]

Par. 5a. Paragraph (a) (1) of § 1.168-5 is amended by revising the third sentence to read as follows: "Also, it will be only a portion of what would otherwise constitute the adjusted basis of the emergency facility if only a portion of the basis (unadjusted) is certified as attributable to defense purposes or, in the case of a certification after August 22, 1957, if only a portion of the basis (unadjusted) is certified as attributable to the national defense program."

b. Paragraph. (b) (1) of § 1.168-5 is amended by deleting "section 168(e) (1)" and inserting in lieu thereof "section 168 (e) (1) or (2)."

[F.R. Doc. 60-22; Filed, Jan. 4, 1960; 8:47 a.m.]

#### [T.D. 6440]

### PART 1-INCOME TAX; TAXABLE YEARS BEGINNING AFTER DE-**CEMBER 31, 1953**

**Exclusion of Certain Dividends From** the Computation of the Intercorporate Dividends-Received Deduction

On October 30, 1959, a notice of proposed rule making with respect to regulations under section 246(c) of the Internal Revenue Code as added by section 18 of the Technical Amendments Act of 1958 (72 Stat. 1614) was published in the Federal Register (24 F.R. 8845). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the regulations as so published are hereby adopted without change.

(Sec. 7805, I.R.C. 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] DANA LATHAM. Commissioner of Internal Revenue.

Approved: December 29, 1959.

DAVID A. LINDSAY. Acting Secretary of the Treasury.

PARAGRAPH 1. Section 1.246 is amended by adding at the end of section 246(b) the following:

Sec. 246. Rules applying to deductions for dividends received. \* \* \*

(c) Exclusion of certain dividends-(1) In general. No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock-

(A) Which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 15 days or less, or

(B) To the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make corresponding payments with respect to substantially identical stock or securities.

(2) 90-day rule in the case of certain preference dividends. In the case of any stock having preference in dividends, the holding period specified in paragraph (1) (A) shall be 90 days in lieu of 15 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods

aggregating in excess of 366 days.
(3) Determination of holding periods. For purposes of this subsection, in determining the period for which the taxpayer has held

any share of stock-

(A) The day of disposition, but not the day of acquisition, shall be taken into account.

(B) There shall not be taken into account any day which is more than 15 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and

(C) Paragraph (4) of section 1223 shall

not apply.

The holding periods determined under the preceding provisions of this paragraph shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary or his delegate) for any period (during such holding periods) in which the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities.

[Sec. 246(c) as added by sec. 18. Technical Amendments Act 1958 (72 Stat. 1614) ]

There is inserted after § 1.246-2 the following new section:

#### § 1.246-3 Exclusion of certain dividends.

- (a) In general. Corporate taxpayers are denied, in certain cases, the dividends-received deduction provided by section 243 (dividends received by corporations), section 244 (dividends received on certain preferred stock), and section 245 (dividends received from certain foreign corporations). The abovementioned dividends-received deductions are denied, under section 246(c)(1), to corporate shareholders:
- (1) If the dividend is in respect of any share of stock which is sold or otherwise disposed of in any case where the taxpayer has held such share for 15 days or less; or
- (2) If and to the extent that the taxpayer is under an obligation to make corresponding payments with respect to substantially identical stock or securities. It is immaterial whether the obligation has arisen pursuant to a short sale or otherwise.
- (b) Ninety-day rule for certain preference dividends. In the case of any stock having a preference in dividends, a special rule is provided by section 246(c)(2) in lieu of the 15-day rule described in section 246(c)(1) and paragraph (a) (1) of this section. If the taxpayer receives dividends on such stock which are attributable to a period or periods aggregating in excess of 366 days, the holding period specified in section 246(c) (1) (A) shall be 90 days (in lieu of 15 days).
- (c) Definitions—(1) "Otherwise disposed of". As used in this section the

No. 2---2

disposal by gift.

(2) "Substantially identical stock or securities". The term "substantially identical stock or securities" is to be applied according to the facts and circumstances in each case. In general, the term has the same meaning as the corresponding terms in sections 1091 and 1233 and the regulations thereunder. See paragraph (d) (1) of § 1.1233-1.

(3) Obligation to make corresponding payments. (i) Section 246(c)(1)(B) of the Code denies the dividends-received deduction to a corporate taxpayer to the extent that such taxpayer is under an obligation, with respect to substantially identical stock or securities, to make payments corresponding to the dividend received. Thus, for example, where a corporate taxpayer is in both a "long" and "short" position with respect to the same stock on the date that such stock goes ex-dividend, the dividend received on the stock owned by the taxpayer will not be eligible for the dividends-received deduction to the extent that the taxpayer is obligated to make payments to cover the dividends with respect to its offsetting short position in the same stock. The dividends-received deduction is denied in such a case without regard to the length of time the taxpayer has held the stock on which such dividends are received.

(ii) The provisions of subdivision (i) of this subparagraph may be illustrated by the following example:

Example. Y Corporation owns 100 shares of the Z Corporation's common stock on January 1, 1959. Z Corporation on January 15, 1959, declares a dividend of \$1.00 per share payable to shareholders of record on January 30, 1959. On January 21, 1959, Y Corporation sells short 25 shares of the Z Corporation's common stock and remains in the short position on January 31, 1959, the day that Z Corporation's common stock goes ex-dividend. Y Corporation is therefore obligated to make a payment to the lender of the 25 shares of Z Corporation's common stock which were sold short, corresponding to the \$1.00 a share dividend that the lender would have received on those 25 shares, or \$25.00. Therefore, \$25.00 of the \$100.00 that the Y Corporation receives as dividends from the Z Corporation with respect to the 100 shares of common stock in which it has a long position is not eligible for the dividends-received deduction.

(d) Determination of holding period— (1) In general. Special rules are provided by paragraph (3) of section 246(c) for determining the period for which the taxpayer has held any share of stock for purposes of the restriction provided by such section. In computing the holding period the day of disposition but not the day of acquisition shall be taken into account. Also, there shall not be taken into account any day which is more than 15 days after the date on which the share of stock becomes ex-dividend. Thus, the holding period is automatically terminated at the end of such 15day period without regard to how long the stock may be held after that date. In the case of stock qualifying under paragraph (2) of section 246(c) (as having preference in dividends) a 90-day period is substituted for the 15-day period in the rule mentioned above. Finally, section 1223(4), relating to hold-

term "otherwise disposed of" includes ing periods in the case of wash sales, shall not apply. Therefore, tacking of the holding period of the stock disposed of to the holding period of the stock acquired where a wash sale occurs is not permitted for purposes of determining the holding period described in section 246(c).

(2) Special rules. Section 246 (c) requires that the holding periods determined thereunder shall be appropriately reduced for any period that the taxpayer's stock holding is offset by a corresponding short position resulting from an option to sell, a contractual obligation to sell, or a short sale of, substantially identical stock or securities. The holding periods of stock held for a period of 15 days or less on the date such short position is created shall accordingly be reduced to the extent of such short position. Where the amount of stock acquired within such period exceeds the amount as to which the taxpayer establishes a short position, the stock the holding period of which must be reduced because of such short position shall be that most recently acquired within such period. If, on the date the short position is created, the amount of stock subject to the short position exceeds the amount, if any, of stock held by the taxpayer for 15 days or less, the excess shares of stock sold short shall, to the extent thereof, postpone until the termination of the short position the commencement of the holding periods of subsequently acquired stock. Stock having a preference in dividends is also subject to these rules, except that the 90-day period provided by paragraph (b) of this section shall apply in lieu of the 15-day period otherwise applicable. These rules may be illustrated by the following examples:

Example (1). L Company purchased 100 shares of Z Corporation's common stock during January 1959. On November 26, 1959, L Company purchased an additional 100 shares of the same stock. On December 1, 1959, Z Corporation declared a dividend payable on its common stock to shareholders of record on December 20, 1959. Also on December 1, L Company sold short 150 shares of Z Corporation's common stock. On December 16, 1959 (before the stock went ex-dividend), L Company closed its short sale with 150 shares purchased on that date. In determining, for purposes of section 246(c), whether L Company has held the 100 shares of stock acquired on November 26 for a period in excess of 15 days, the period of the short position (from December 2 through December 16) shall be excluded. Thus, if on or before December 26, 1959, L Company sold the 100 shares of Z Corporation stock which it purchased on November 26, 1959, it would not be entitled to a dividends-received deduction for the dividends received on such shares because it would have held such shares for 15 days or less on the date of the sale. Since L Company had held the 100 shares acquired during January 1959 for more than 15 days on December 2, 1959, and since it was under no obligation to make payments corresponding to the dividends received thereon, section 246(c) is inapplicable to the dividends received with respect to those shares.

Example (2). Assume the same facts as in example (1) above except that the additional 100 shares of Z Corporation common stock were purchased by L Company on December 10, 1959, rather than November 26, 1959. In determining, for purposes of section 246(c), whether L Company has held

such shares for a period in excess of 15 days, the period from December 11, 1959, until December 16, 1959 (the date the short sale made on December 1 was closed), shall be

(e) Effective date. The provisions of this section shall apply to stock acquired after December 31, 1957, or with respect to stock acquired before that date where the taxpayer has made a short sale of substantially identical stock or securities after that date.

[F.R. Doc. 60-23; Filed, Jan. 4, 1960; 8:47 a.m.]

### Title 32—NATIONAL DEFENSE

Chapter V—Department of the Army SUBCHAPTER A-AID OF CIVIL AUTHORITIES AND PUBLIC RELATIONS

### PART 517-ARMY PARTICIPATION IN CIVILIAN ACTIVITIES

### Participation in Activities of Private **Associations**

Section 517.2 is revised to read as follows:

§ 517.2 Participation in activities of private associations.

(a) Scope. This section enunciates the policies regarding participation by Department of the Army agencies and commands in the activities of private associations.

(b) General. (1) Participation will be limited to the extent of the Department of Defense interest involved.

(2) The favoring of one association or organization over another will be avoided.

(c) Basis. (1) Participation will be upon such basis as will avoid:

(i) Unauthorized acceptance by the United States of membership in a private organization. (See 24 Comp. Gen. 814; 32 Comp. Gen. 398; 32 Comp. Gen. 15; 33 Comp. Gen. 126.)

(ii) The use of the name of the United States Government by a private organization, voluntary association, or corporation, implying the sponsorship of such organization by the Government, without authority of Congress.

(iii) Participation in the management and control of such organization without congressional authorization.

(iv) Participation in the determinations or conclusions of private organizations or associations, in such manner as to suggest compliance therewith by the Government without subsequent responsible administrative authority or congressional authorization.

(2) In the event of doubt as to whether membership of an agency in a particular private organization is unauthorized under subparagraph (1) (i) of this paragraph the case should be referred to The Judge Advocate General, Department of the Army, Washington 25, D.C., prior to

acceptance of membership.

(3) Agencies of the Department of the Army may participate in activities of scientific, technical, professional, and other organizations, societies, and associations in the discussion of matters of mutual interest, otherwise consistent with law, including antitrust law and laws relating to security, and may express in such discussions the views of the agency. An agency may vote verbally or in writing on issues presented for a vote, provided it is made clear to the private organizations, societies, and associations that such vote indicates no more than the opinion on that issue of the agency voting. No vote so cast will be considered to bind the Department of the Army or any agency thereof in any way to any particular present or future course of action.

(d) Personal. These policies will not apply to membership or participation by military or civilian personnel of the Department of the Army, as individuals, in private organizations or associations, including technical and professional societies and military or veterans' organizations, otherwise consistent with law, including the Hatch Act, the Anti-Lobbying Act, and other laws which prohibit Government officers and employees from engaging in activities inconsistent with their governmental employment.

[AR 1-210, December 7, 1959] (Sec. 3012, 70A Stat. 157; 10 U.S.C. 3012)

R. V. LEE,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 60-4; Filed, Jan. 4, 1960; 8:45 a.m.]

### Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

PART 21—COMMISSIONED OFFICERS
PART 33—NARCOTIC ADDICTS

PART 51—GRANTS TO STATES FOR PUBLIC HEALTH SERVICES

PART 53—GRANTS FOR SURVEY, PLANNING AND CONSTRUCTION OF HOSPITALS AND MEDICAL

PART 55—GRANTS FOR WATER POLLUTION CONTROL

PART 71—FOREIGN QUARANTINE PART 72—INTERSTATE QUARANTINE PART 73—BIOLOGICAL PRODUCTS

### Miscellaneous Technical . Amendments

Notice of proposed rule making, public rule making procedures and delay in effective date have been omitted as unnecessary in the issuance of the following amendments to the Public Health Service regulations which (1) revise citations of authority in Part 21 to accord with the enactment of Title 10, U.S.C. into positive law by the act of August 10, 1956 (70A Stat. 1), and (2) amend the definition of "United States" as required by the admission of Alaska and Hawaii to Statehood.

Effective date. These amendments shall become effective on the date of their publication in the FEDERAL REGISTER.

1. The citation of authority for §§ 21.191 and 21.192 of Subpart J of Part 21 is revised to read as follows:

AUTHORITY: §§ 21.191 and 21.192 issued under sections 1214 and 1216, 70A Stat. 100, 70A Stat. 619; 10 U.S.C. 1214 and 1216, 42 U.S.C. 213.

2. The citation of authority for §§ 21.331 to 21.333 of Subpart O of Part 21 is revised to read as follows:

AUTHORITY: §§ 21.331 and 21.332 issued under 70A Stat. 113, 70A Stat. 619; 10 U.S.C. 1482, 42 U.S.C. 213. Section 21.333 issued under 70A Stat. 114, 70A Stat. 619; 10 U.S.C. 1485, 42 U.S.C. 213.

3. The first sentence of § 21.331 of Subpart O of Part 21 is revised to read as follows:

### § 21.331 Commissioned officers.

Upon the death of a commissioned officer, the Surgeon General or his designee may pay the necessary expenses for those items enumerated in 70A Stat. 113; 10 U.S.C. 1482 in accordance with and subject to those limitations prescribed in said act. \* \* \*

4. Section 33.6 of Part 33 is amended to read as follows:

#### § 33.6 Prisoners, ex-prisoners, and probationers, transportation furnished upon discharge.

Every prisoner, ex-prisoner, and probationer shall be furnished with transportation, by the cheapest usually travelled route, to the place of conviction or of bona fide residence within the United States, or to such other place within the United States as, in the opinion of the medical officer in charge, may afford the best opportunity for permanent rehabilitation. As used in this section, "United States" includes all places, continental or insular, subject to the jurisdiction of the United States, except the Canal Zone.

5. Paragraph (k) of § 51.1 of Part 51 is amended to read as follows:

### § 51.1 Definitions.

(k) "State" includes any State, the District of Columbia, Puerto Rico, or the Virgin Islands.

6. Paragraph (w) of § 53.1 of Subpart A, of Part 53 is amended to read as follows:

### § 53.1 Definitions.

- (w) State. The 50 States, Puerto Rico, Guam, Virgin Islands, and the District of Columbia.
- 7. Paragraph (f) of § 55.1 of Subpart A, of Part 55 is amended to read as follows:

### § 55.1 Definitions.

(f) "State" means a State, the District of Columbia, Puerto Rico and the Virgin Islands.

(Sec. 10, 70 Stat. 506; 33 U.S.C. 4661)

8. Paragraph (c) of § 71.501 of Subpart K of Part 71 is amended to read as follows:

### § 71.501 Scope.

- (c) The term "United States" as used in this subpart, means the 50 States, Puerto Rico and the Virgin Islands.
- 9. Paragraph (m) of § 72.1 of Subpart A of Part 72 is amended to read as follows:

### § 72.1 General definitions.

(m) State. Any State, the District of Columbia, Puerto Rico and the Virgin Islands.

10. Paragraph (e) of § 73.1 of Part 73 is amended to read as follows:

#### § 73.1 Definitions.

(e) "State" means a State or the District of Columbia, Puerto Rico, or the Virgin Islands.

(Notice of proposed rule making with respect to this amendment was published in 24 F.R. 7835, September 29, 1959.)

(Except as otherwise indicated in the text, the foregoing amendments are issued under section 215, 58 Stat. 690; 42 U.S.C. 216)

Dated: December 23, 1959.

[SEAL]

L. E. Burney, Surgeon General,

Approved: December 29, 1959.

ARTHUR S. FLEMMING, Secretary.

[F.R. Doc. 60-32; Filed, Jan. 4, 1960; 8:49 a.m.]

### PROPOSED RULE MAKING

### DEPARTMENT OF THE TREASURY

Internal Revenue Service
[ 26 CFR (1954) Part 48 ]

RECREATIONAL EQUIPMENT AND OTHER ITEMS

### Notice of Hearing on Proposed Regulations

Proposed regulations under sections 4161, 4171-4173, 4181, 4182, 4191, 4201, and 4211 of the Internal Revenue Code

of 1954, relating to excise tax on sporting goods, photographic equipment and firearms; business machines, pens, mechanical pencils, and lighters; and matches, were published in the Federal Register for November 19, 1959.

A public hearing on these proposed regulations will be held on Thursday, January 21, 1960, at 10:00 a.m., e.s.t., in Room 3303, Internal Revenue Building, Tweltth and Constitution Avenue NW., Washington, D.C. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal

Revenue, Attention: T:P, Washington 25, D.C. by January 18, 1960.

[SEAL] MAURICE LEWIS,
Director, Technical Planning
Division, Internal Revenue
Service.

[F.R. Doc. 60-72; Filed, Jan. 4, 1960; 8:49 a.m.]

### [ 26 CFR (1954) Part 48 ]

### RETURN AND PAYMENT OF RETAIL-ERS EXCISE TAX BY SUPPLIERS IN CERTAIN CASES

### Notice of Hearing on Proposed Regulations

Proposed regulations under section 6011(c) of the Internal Revenue Code of 1954, relating to excise tax returns by suppliers, were published in the FEDERAL REGISTER for December 3, 1959.

A public hearing on these proposed regulations will be held on Thursday, January 14, 1960, at 10:00 a.m., e.s.t., in Room 5003, Internal Revenue Building, Twelfth and Constitution Avenue NW., Washington, D.C. Persons who plan to attend the hearing are requested to so notify the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D.C. by January 11, 1960.

[SEAL] MAURICE LEWIS,
Director, Technical Planning
Division, Internal Revenue
Service.

[F.R. Doc. 60-73; Filed, Jan. 4, 1960; 8:49 a.m.]

### DEPARTMENT OF AGRICULTURE

**Agricultural Marketing Service** 

[7 CFR Part 946]

[Docket No. AO-123-A22]

### MILK IN LOUISVILLE MARKETING AREA AND THE LEXINGTON-FRANKFORT, KENTUCKY, AREA

Notice of Recommended Decision and Opportunity To File Written Exceptions to Proposed Amendments to Tentative Marketing Agreement and Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), notice is hereby given of the filing with the Hearing Clerk of this recommended decision of the Deputy Administrator, Agricultural Marketing Service, United States Department of Agriculture, with respect to proposed amendments to the tentative marketing agreement, and order regulating the handling of milk in the Louisville marketing area and in the Lexington-Frankfort area. Interested parties may file written exceptions to this decision with the Hearing Clerk,

United States Department of Agriculture, Washington, D.C., not later than the close of business the 15th day after publication of this decision in the Federal Register. The exceptions should be filed in quadruplicate.

Preliminary statement. The hearing on the record of which the proposed amendments, as hereinafter set forth, to the tentative marketing agreement and to the order, were formulated, was conducted at Frankfort and Louisville, Kentucky, on August 4-13, 1959, pursuant to notice thereof which was issued July 15, 1959 (24 F.R. 5758).

The material issues on the record of the hearing relate to:

- 1. Whether the handling of all milk in the area proposed to be regulated is in the current of interstate commerce or directly burdens, obstructs or affects interstate commerce.
- 2. Whether marketing conditions show the need to regulate the handling of milk in proposed territory outside the presently defined Louisville marketing area, and if so:
- (a) Whether such regulation should be by means of (1) expanding the Louisville marketing area to include all or part of such proposed territory in the State of Indiana and in the Louisville-Lexington-Frankfort, Kentucky area, or (2) a separate marketing agreement and order to regulate the handling of milk in the Lexington-Frankfort area with other terms and provisions of a separate order identical with those contained in Order No. 46 as proposed to be amended or with other appropriate modifications thereof.
- 3. What the terms and provisions of the regulation should be, including consideration of the following proposed changes of Order No. 46.
  - (a) The scope of regulation;
  - (b) The Class I price differential;
  - (c) The price for Class III milk;
- (d) The area in which location differentials are applicable;
- (e) Distribution of payments under the fall incentive payment plan; and
- (f) Such other amendments incidental to those related to specific issues, or for administrative purposes, as are necessary to properly co-ordinate provisions of the regulation in its entirety.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

(1) Character of commerce. The handling of all milk to be regulated is in the current of interstate commerce or directly burdens, obstructs, or affects interstate commerce in milk and its products.

Fluid milk is regularly received from farms located in Kentucky and Indiana at plants of regulated handlers located in the present Louisville, Kentucky marketing area. Milk from both States is intermingled in such plants and is distributed to consumers in Kentucky and in Indiana in the presently defined Louisville marketing area. Such milk and milk products are also distributed from such plants to consumers outside the present Louisville marketing area in

Indiana and Kentucky in the territory hereinafter decided upon for the inclusion in the marketing area under Order No. 46. Such-milk is sold by Louisville handlers in Frankfort and Lexington, Kentucky and in surrounding counties in competition with milk from plants of distributors located in Frankfort and Lexington.

To supply presently regulated handlers with supplemental milk to meet their fluid milk requirements, the Falls Cities Cooperative Milk Producers Association operates a plant to assemble and cool milk received from producer-members located in Indiana and Kentucky and when necessary from other markets. The association has imported milk from time to time from plants located in Wisconsin, Illinois, and Indiana. Supplemental supplies of milk are furnished by the association also from their Louisville plant to plants in Lexington. The association also supplies milk on a regular basis from a number of its producermember farms directly to a Lexington distributing plant. A number of Lexington distributors procure a substantial portion of their milk supplies from farms located in the same area as the farms of producers supplying Louisville plants. A portion of the supply for Lexington handlers is procured also from areas in Kentucky in competition with milk procured by and moved to plants located in West Virginia, Cincinnati, Ohio and Newport, Kentucky. During 1959 Lexington handlers imported milk from outside the State from plants located at Union City and Fort Wayne, Indiana.

Falls Cities Cooperative Milk Producers Association disposes of milk in excess of the requirements of the handlers supplied by them in the Louisville-Lexington area to other fluid milk plants and to manufacturing outlets in Arkansas, West Virginia, Indiana, Illinois and various points in the State of Kentucky.

(2) Need for regulation. Marketing conditions in the Lexington-Frankfort, Kentucky area warrant (a) the regulation of the handling of milk in such area, (b) the accomplishment of such regulation by including territory in and surrounding the cities of Lexington-Frankfort in the marketing area of Order No. 46 regulating the handling of milk in the Louisville, Kentucky marketing area. Order No. 46 should be redesignated as the Louisville-Lexington, Kentucky marketing area.

The Falls Cities Cooperative Milk Producers Association representing producers under the present Order No. 46 and dairy farmers delivering milk to plants in Lexington and Frankfort, Kentucky, proposed that the marketing area of Order No. 46 be expanded to include Fayette and Franklin Counties (principal cities-Lexington and Frankfort). As an alternative, the association proposed that a separate marketing agreement and order be issued for a Lexington-Frankfort marketing area with other terms and provisions identical with those contained in the Louisville order, as proposed to be amended. Proposals by certain handlers regulated under the Louisville order were the same as the

association's proposals except that they would include additional territory in the marketing area(s). Other Louisville handlers also supported regulation of territory embracing their primary fluid milk distribution areas. Lexington distributors and others who sell milk in the proposed area opposed regulation either by expansion of the Louisville marketing area or by a separate order. Lexington handlers, except for one, favored regulation by expansion of the Louisville order, if it were determined that regulation should be promulgated for the Lexington and Frankfort areas.

Dairy farmers in the Lexington-Frankfort area have made a number of attempts to organize a milk bargaining association in order to gain a more effective voice in the establishment of prices and the marketing of their milk. In the early 50's there was considerable effort by dairy farm leaders, assisted by County Agricultural Agents, to organize farmers supplying the Lexington market. A substantial number of dairy farmers signed for membership in the contemplated organization. At the same time, Lexington milk distributors increased the price paid dairy farmers in sections of the milkshed where procurement competition for milk is most extensive between Louisville and Lexington plants by 50 cents per hundredweight, effective in the flush production season. This increase in price took away the immediate incentive for an organization and the movement failed.

In the years that followed there were occasions of dissatisfaction and unrest among producers as evidenced by meetings held by various county groups from time to time. In the fall of 1957 a more extensive movement was started by the Anderson County Extension Council Dairy Committee to explore courses of action to improve conditions in the marketing of milk for Anderson County producers. Following a survey of conditions in Anderson County and in a number of other counties supplying the Lexington market, including Fayette, Franklin, Boyle, Mercer, Woodford, Bourbon, Harrison, Shelby, Spencer, Washington and Lincoln, a program was outlined which centered around the services which could be performed by a collective bargaining association and the regulation of the handling of their milk under a Federal order. A series of educational meetings was held of dairy farmer representatives from the various counties, extension people and representatives from cooperative associations from several other markets. As a result of these meetings and because of the relatively small number of producers supplying the Lexington market (240), it was decided that the interest of pro-ducers could be served best by joining with the Falls Cities Cooperative Milk Producers Association of Louisville and seeking the extension of Order No. 46 to the Lexington market. The objectives of producers in seeking regulation for the Lexington market are to establish a sound and fair basis of establishing prices on which production plans may be formulated, the establishment of a uniform method of pricing milk used for

the same purpose, and auditing and checking procedures to guarantee accurate reporting of the utilization, butterfat tests and weights of producer milk by milk distributors. Although some distributors took active measures to discourage producers from joining the association and from seeking regulation for the Lexington market, by the time of the hearing at least 60 percent of Lexington producers had become members of the association.

One of the main causes for dissatisfaction and unrest among the majority of dairy farmers supplying the Lexington market and one of the underlying needs for regulation has been the variety of pricing plans used by operators of fluid milk distributing plants in the procurement of their milk supply. Prices paid dairy farmers for milk of comparable quality and butterfat content delivered to the same plant have varied considerably. At times such differences have amounted to as much as 50 cents per hundredweight. A large proportion of the dairy farmers are paid on some type of a base plan. There is a lack of uniformity in the application of such plans by the various distributors and in some instances among dairy farmers who deliver milk to the same plant. Some producers are paid on a baseexcess-bonus plan. All farmers, however, are not paid in accordance with a base plan. At some plants part of the dairy farmers are paid a flat price per hundredweight adjusted for butterfatcontent.

In general, the different pricing plans in the Lexington market have resulted in most of the dairy farmers receiving prices per hundredweight equal to the uniform or blend prices paid producers under Order No. 46 less from 5 to 8 cents per hundredweight. These differences are equal to the marketing services assessment under the order and the membership dues of the cooperative association. Certain producers, however, are accorded special favorable consideration while at the same time some dairy farmers have no way of knowing the basis on which their milk is priced or what other dairy farmers are receiving for their milk.

Most of the plants in the Lexington-Frankfort area are engaged primarily in the distribution of fluid milk. Prices paid producers are not determined on the basis of a classified pricing plan. Dairy farmers have no assurance that they are receiving full utilization value of their milk. Without a classifled pricing plan dairy farmers may be paid surplus or near manufacturing price levels for a portion of their milk which is disposed of for fluid consumption. At times milk was imported from outside sources by plants at the same time that local dairy farmers were paid surplus prices for a portion of their milk. All of these factors breed unrest, create doubt and contribute to disorderly marketing conditions. The accumulation and dissemination of marketwide information as is made possible under an order is needed in the Lexington market.

The issuance of an order to regulate the handling of milk in the Lexington-

Frankfort area would tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 by assuring stable and orderly marketing conditions for all milk produced for sale in the area and will assure an adequate and dependable supply of pure and wholesome milk to consumers. This would be achieved basically through the establishment of a classified and uniform system of pricing and a uniform method of payment to producers for their milk. An order is necessary to provide the means of accomplishing many of the objectives sought by producers including the following:

- (a) A predetermined and dependable method for establishing prices to producers at levels contemplated under the Agricultural Marketing Agreement Act, as amended;
- (b) The establishment of uniform pricing to all handlers for milk received from producers according to a classified pricing plan based upon the utilization made of the milk;
- (c) An impartial audit of handlers' records of receipts and utilization to further insure uniform prices for milk purchased;
- (d) A means for assuring accurate weights and tests of milk;
- (e) Uniform minimum returns to producers supplying the market and an equitable sharing by all producers of the lower returns from the sale of the necessary reserve supply; and
- (f) Marketwide information for producers, handlers and consumers on receipts, sales and other data relating to the marketing of their milk.

Several of these objectives can be achieved more effectively and efficiently for the Lexington-Frankfort area by regulating the handling of milk under a single marketing order for the Louisville-Lexington-Frankfort area than by two separate orders. The territory proposed to be regulated in the Lexington-Frankfort area and the territory now regulated under the Louisville order has the essential characteristics of a single milk marketing area. General economic conditions and conditions relative to the production, delivery and distribution of milk in this territory are integrated and interdependent to such an extent that the area constitutes a contiguous fluid milk marketing area. Historically there has been some overlapping of wholesale and retail distribution routes from plants regulated under the Louisville order and such routes from unregulated plants in Lexington and Frankfort. During the past two years, in particular, the competition in the sale of fluid milk has increased significantly among distributors in these markets as wholesale and retail routes radiating from plants in these cities have been extended to serve additional territory. Such competition is most pronounced in the territory lying between the metropolitan centers of Louisville and Lexington. During the past twelve months, furthermore, routes have been extended by. Louisville handlers to serve the City of Lexington and surrounding territory. Health regulations relative to the production and sale of milk are applied similarly throughout the entire area and permit the free movement of milk.

Louisville handlers and Lexington-Frankfort distributors also compete in the procurement of their fluid milk supply from dairy farmers in common production areas. The farms of producers whose milk is delivered to Louisville plants are located in the same communities as farms of farmers whose milk is delivered to plants in Lexington and Frankfort. Some dairy farmers whose milk is regularly delivered to Lexington-Frankfort plants formerly were associated with Louisville plants. One Lexington distributor does not procure sufficient milk from dairy farmers regularly associated with his plant to provide an adequate reserve necessary to supply at all times the full demand for fluid milk. The additional milk needed is supplied by the association from producer-member farms directly to this plant. When milk from such producers is not needed at this plant it is moved to the association's "equalization plant" or direct to other handlers. Supplemental supplies of milk are also moved to Lexington handlers from the association's plant in Louisville which is regulated under Order No. 46. Under such conditions producers under the Louisville order have carried to some extent the necessary reserve supply associated with the unregulated Lexington area.

The plant of the cooperative association has been operated primarily as an equalization plant for the Louisville market. This assists the cooperative association in performing the function of promoting the highest practical utilization value for producer milk by the most efficient allocation of the available supplies to Louisville handlers. The association has indicated its intention to perform this same service for their producer-members and handlers in the Lexington area who procure their milk supply primarily from association members. A single milk marketing order for the Louisville-Lexington-Frankfort area will enable the association to use its facilities to achieve the most effecient allocation and utilization of milk for all of its members. It will promote equal sharing among all producers of the cost of carrying the reserve supplies associated with the fluid milk business in the

The regulation of Lexington-Frankfort area by means of a separate order could create incentives for uneconomical handling of milk to the ultimate disadvantage to producers and consumers and could result in the creation of artifical intermarket problems which may be avoided by a single order. Administrative problems would be reduced by a single order for the entire area.

A number of amendments to Order No. 46 are discussed later in this decision. Such amendments have been decided upon on the basis of conditions existing throughout the entire expanded marketing area. All other terms and provisions of the present Order No. 46 are appropriate for application in the extended area decided upon. To more accurately describe the area under regulation, however, the Order No. 46 marketing area

should be redesignated as the Louisville-Lexington marketing area and the title of the order changed accordingly.

(3) (a) Scope of regulation. The order contains a number of definitions which assists in setting forth clearly what milk and what persons are subject to regulation. These definitions and other provisions of the order relating to the scope of the regulation were reviewed at the hearing. Specific proposals were made for changing the definitions of the marketing area and a "pool plant".

Marketing area. The Order No. 46 marketing area should be expanded to include Clark, Floyd and Harrison Counties in Indiana and Jefferson, Bullitt, Meade, Hardin, Larue, Nelson, Spencer, Shelby, Oldham, Henry, Franklin, Anderson, Woodford, Scott, Fayette, Jessamine, Madison, Montgomery, Clark and Bourbon Counties in Kentucky.

The present marketing area consists of Jefferson County and the Fort Knox military reservation in Kentucky and Floyd County and a portion of Clark County in Indiana. The current population of the present marketing area is approximately 700,000 and that of the proposed expanded marketing area approximately 1.0 million. The main centers of population are in Jefferson, Fayette, Franklin and Hardin Counties. The population of Jefferson County, including the City of Louisville, is aproximately 585,000. The City of Lexington is located in Fayette County which has a population of 124,000. Elizabethtown is the principal City in Hardin County and this county has a population of 55,000. The City of Frankfort, the capital of the State of Kentucky, is located in Franklin County which has a population of approximately 30,000. Frankfort is 49 miles East of Louisville and approximately 24 miles West of Lexington. Elizabethtown is located 40 miles South of Louisville.

There are 23 processors of fluid milk with plants located in the present marketing area which are regulated by the present order. The handling of milk would be regulated at 15 additional plants located in the proposed expanded area. Six of these plants are located in Fayette County and three in Franklin County. There are no Grade A processing plants located in Hardin County.

The major portion of the fluid milk distributed in the counties in Indiana and Kentucky, herein proposed to be included in the marketing area, which are adjacent to the presently defined Louisville marketing area, is distributed on wholesale and retail routes from regulated Louisville plants. More than 50 percent, and in some instances as much as 90 percent, of the total fluid milk distributed in each of the counties of Oldham, Shelby, Spencer, Bullitt, Meade, Hardin, Nelson, Henry and Larue in Kentucky and Harrison and Clark Counties in Indiana is distributed from presently regulated Louisville plants. Regulation of this territory, which embraces the primary fluid milk sales area of Louisville handlers, will not subject to full regulation plans of handlers from which the major portion of the total fluid milk is distributed in other areas and markets.

Wholesale and retail fluid milk routes from Louisville plants extend into Franklin County and overlap routes from plants in Frankfort-Lexington and Lawrenceburg in Anderson County. Routes from the plant in Lawrenceburg also extend into Shelby and Woodford Counties where they overlap with routes from Louisville and Lexington plants. Fayette County, in which Lexington is located, and the six surrounding counties of Bourbon, Scott, Woodford, Jessamine, Madison and Clark constitute the primary fluid milk distribution area of Lexington plants. Eighty-eight percent of the total fluid milk distributed in these counties is from plants in Lexington. In addition, the majority of the fluid milk distributed in Montgomery County is from plants in Lexington and Louisville. The primary competition with milk from Lexington in these counties is with milk from Louisville plants and unregulated plants outside of Lexington from which the majority of the fluid milk is distributed in the territory herein proposed to be regulated. Consumer packaged milk from the plant of one Louisville handler is shipped to a distributing point in Lexington and is distributed in competition with milk from Lexington plants in the immediately surrounding counties. Milk from other Louisville plants is distributed in this territory in varying amounts. Fluid milk is distributed from one or more Louisville plants in 9 of the 14 counties proposed by Lexington handlers to be included in the marketing

Washington, Mercer. Boyle Garrard Counties in Kentucky should not be included in the marketing area. These counties are on the fringe of the primary fluid milk distribution area of Louisville-Frankfort and Lexington plants and of other plants in this area to be fully regulated. A relatively small percentage of the total fluid milk sales from such plants is distributed in these counties. Excluding these counties from the marketing area will result in a marketing area boundary to the south which will exclude from regulation certain plants whose sales areas are confined to these counties and keep to a minimum the competition and overlapping of wholesale and retail fluid milk routes between fully regulated plants and other plants whose sales areas are composed primarily of these counties and territory lying to the south of them.

Owen and Harrison Counties, proposed to be included in the marketing area by Lexington handlers, should not be included in the marketing area. Owen County is a sparsely populated area and only 10 percent of the total fluid milk distributed in Owen County is from Lexington plants. None of the Louisville handlers distributes milk in Owen County. The major portion of the fluid milk in Owen and in Harrison County is distributed from unregulated plants which serve markets in the northern Kentucky area near Cincinnati.

Operators of plants at Madison, Seymour and Union City, Indiana opposed including that portion of Clark County, Indiana, presently not included in the Louisville marketing area, and Oldham

and Henry Counties, Kentucky in the marketing area. Fluid milk from these plants is distributed in this territory. As previously stated, Oldham and Henry Counties are a part of the primary fluid milk distribution area of Louisville handlers and only a small percentage of the total fluid milk distributed here is distributed from unregulated plants. unregulated handlers distributing fluid milk in the presently unregulated portion of Clark County procure their milk supplies from dairy farmers on the basis of blend prices resulting under the Louisville and Cincinnati orders. plants have a relatively high proportion of their receipts of Grade A milk used in fluid disposition. Because regulated handlers are required to pay the Class I price for milk distributed in this territory they are at a competitive disadvantage in the procurement of such milk. Furthermore, the plants of these unregulated handlers are located so that they may reasonably, and do, depend upon the Louisville market for their supplemental milk supplies. Under the compensatory payment provisions of the order (discussed later herein) these nonpool plants are not required to make payments on milk disposed of in the marketing area, if an equivalent amount of milk is purchased as Class I milk from pool plants during the month.

It is not possible to determine from the record the proportion of the total sales distributed by various distributors in the unregulated portion of Clark County. One Order No. 46 handler, whose plant is located in Jeffersonville, Indiana, however, distributes 98 percent of his total sales in Clark County and approximately 17 percent of the total in the presently unregulated portion. It is necessary, therefore, to include all of Clark County in the marketing area to maintain the effectiveness of the regulation and prevent disruptive influences to the orderly marketing of producer milk for the present marketing area. Including all of Clark County in the marketing area will not fully regulate additional handlers who are primarily associated with other markets.

Pool plants. The requirement that a "city" or distributing type plant dispose of 30 percent of the receipts of Grade A milk from dairy farmers and country plants as Class I milk in order to qualify as a pool plant should be changed by increasing this requirement to 50 percent for the months of September through February. Provisions should be made also for a plant packaging milk in consumer packages and transferring such milk to other pool plants to receive credit for such Class I milk for the purpose of this determination.

The minimum class prices of the order and the pooling of the proceeds for milk apply to that milk eligible for distribution as Grade A milk in the marketing area which is received from dairy farmers at pool plants. Currently, to qualify as a pool plant a "city plant" must be approved for distribution of Grade A milk by a duly constituted health authority, dispose of not less than 30 percent of its Grade A receipts as Class I (during the two preceding months) and

dispose of 10 percent or more of such receipts in the marketing area through retail or wholesale routes. Provision is made also for pool status of plants which serve as "country" or supply plants for a distributing plant.

Producers proposed that the present 30 percent (average of two preceding months) Class I disposition requirement be increased to 45 percent. Certain handlers claimed that because of custom bottling operations at some plants and of seasonal variation in the relationship of receipts of producer milk to Class I sales, a 45 percent requirement during the months of highest milk production would have excluded at least one plant from pool plant status during some months of 1958. The utilization experience in other plants that would become subject to regulation as a result of expansion in the marketing area was not made available for the record. the utilization percentage requirements were to be revised, certain handlers supported seasonal adjustment in the utilization percentage and provision for including transfers of packaged milk to other plants. The purpose of the Class I utilization requirement is to preclude full regulation and the pooling of milk at plants which are not primarily engaged in processing and distributing milk for fluid consumption.

Under the present order, Class I utilization credit for packaged milk which is bottled by a plant and is transferred to a pool plant, accrues to the plant disposing of such milk through routes: It would be unreasonable to give Class I utilization credit for such sales to both plants for determining pool plant status. The effectiveness of the provision would not be changed materially by crediting the transferred packaged milk to the plant which packages the milk and deducting such Class I transfers from the Class I sales of the plant to which it is transferred. A city plant from which less than 50 percent of its Grade A receipts are disposed of as Class I milk. particularly during the fall and winter months, in this market is not considered as being primarily in the business of fluid milk distribution and the pooling of milk received at such a plant would dissipate the marketwide proceeds from the sale of Class I milk.

The present 30 percent Class I utilization requirement should be retained for the months of seasonally high production and a 50 percent Class I utilization requirement should be adopted for other months of the year. On the basis of the marketwide relationship of receipts to Class I sales the 50 percent requirement (based on the immediately two preceding months) should apply for pool plant status in each of the months of November through April. The use of the average of the two months immediately preceding each of such months is desirable to minimize short time abnormal fluctuations and to afford handlers the opportunity to determine the status of their plants at the beginning of each month.

The present order provides for payments to the producer-settlement fund with respect to unpriced milk (not priced under a Federal order) which is allocated

to Class I at a pool plant and similar payments by partially regulated nonpool plants on Class I sales in the marketing area. The rate of payment on such milk is the difference between the Class I and Class III prices during the months of January through September and the difference between the Class I price and the uniform price during the months of October through December.

With the expansion of the marketing area as decided herein several additional plants which sell less than 10 percent of their receipts of Grade A milk on routes in the marketing area will become subject to partial regulation. Operators of some of these plants objected to extending the regulation to the counties in which they dispose of milk primarily because of the above stated compensatory payment provisions of the order. Some claimed they pay their producers on the basis of a classified price plan and that such Class I prices were equal to or higher than the prices provided by the order.

Compensatory payments are essential features of Order No. 46. If unregulated plant operators were allowed to dispose of surplus milk in the regulated marketing area, either through pool plants or directly to consumers, without some compensating or neutralizing provision in the order, the disposition of such milk, because of its price advantage relative to fully regulated milk, would displace the fully regulated milk in Class I uses in the marketing area. The plan of Congress as contemplated under the Agricultural Marketing Agreement Act of 1937, as amended, of returning a reasonable level of prices to the producers of milk for the regulated marketing area would be defeated. Inefficiency in the marketing of milk would be encouraged because there would be incentive for the regulated handlers to obtain milk for Class I uses not from the regular and normal sources of supply but from sources of supply generated solely as a result of the price advantage created for unregulated milk by the regulation itself. Providing for some method of compensating for, or neutralizing the effect of, the advantage created for unregulated milk is therefore a necessary provision of this order.

There may be other situations in which plant operators may find it economical or desirable to make shipments of small quantities of milk to the marketing area and yet it would be neither necessary nor desirable in terms of effective regulation to bring the plants fully under regulation. This may be true with respect to shipments of milk to pool plants for the purpose of converting it into manufactured products. Also, milk may be disposed of in the regulated marketing area as Class I milk from plants which are not primarily or even regularly engaged in supplying the marketing area. If relatively small, incidental or accidental shipments of milk into the marketing area would bring under total regulation all the milk at the plant from which such shipments are made, undue hardship might result to the operator of such plant and for the farmers delivering the milk involved. Compensatory payments are necessary

to provide a means by which full regulation of the handling of milk at such plants may be avoided and, at the same time, maintain the integrity of classified pricing and marketwide equalization which are necessary to insure orderly marketing in this area.

The integrity of the regulation can be maintained by providing an alternative method of determining compensatory payments at a distributing plant which has sales of fluid milk products in the marketing area and fails to qualify as a pool plant. Subject to proper reporting and the maintenance of adequate records, the operator of such plant should be given an opportunity to choose between payment into the producer-settlement fund of: (1) An amount computed by multiplying the Class I milk disposed of in the marketing area by the same rates as apply to unpriced milk allocated to Class I milk at pool plants, or (2) the amount by which total payments to dairy farmers for such plant are less than the total amount of the plant's obligation to producers if such obligation is computed as if such plant were a pool plant. This alternative method of determining compensatory payments would eliminate such payments at those plants at which dairy farmers are paid the utilization value of their milk under the terms and provisions of the order.

If the partially regulated handler elects to make payments under the option now contained in the order, the regulation would be protected in the same manner and to the same extent as is provided with respect to compensatory payments on other source milk at pool plants. If the handler chooses to pay the full utilization value of his milk either directly to his own farmers or by combination of payments to his farmers and to the producer-settlement fund, he would not have any advantage in terms of the minimum order class prices on his sales of Class I milk in the marketing area. His total minimum obligation for milk would be determined in exactly the same manner as if he were a fully regulated handler.

Affording this additional option to partially regulated nonpool plants would adequately protect the regulatory plan in this market. None of the operators to which this option may apply regularly obtains milk for such plants from dairy farmers located in a supply area that overlaps to any significant extent the supply area of plants that would be fully regulated under the order. The option to pay directly to dairy farmers who regularly supply such nonpool plants with milk the full utilization value of such milk in accordance with the order, therefore, would not place the operators of pool plants at a competitive disadvantage in the procurement of their milk supplies. Also, under the present organization of the market there would be no significant diversion of the revenue derived from the Class I sales in the marketing area to farmers only incidentally associated with the market at the expense of producers of milk for whom minimum class prices are established and who are relied upon to produce an adequate and dependable sup-

ply of approved milk for the marketing area.

Under the second option set forth above, the operator of the nonpool plant would be required to file a complete report of receipts and utilization. From such reports, subject to audit, the value of milk would be computed at the class prices, adjusted for location and butterfat content, in the same manner as for a pool plant. From this utilization value the market administrator would subtract the payments to the Grade A dairy farmers who constitute the regular supply of milk for the nonpool plant as verified from the producer payroll and any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such other orders. With respect to the payments to the Grade A dairy farmers, only such payments would be allowed as had been made to such farmers by the 17th day following the end of the month—the date by which producers are required to be paid under the order. The payment would be the gross amount paid to such farmers for milk at the nonpool plant. Bona fide deductions for supplies and services, such as hauling, would be allowed as authorized by the dairy farmer.
The assessment of administrative ex-

pense should depend upon which option is chosen by the nonpool distributor. If he elects the first option of payment on his Class I sales in the marketing area he should be required to pay administrative expense only on such quantities of milk so disposed of in the marketing area. If he elects the payment based on the utilization value of his milk he should pay administrative expense on his entire receipts of milk from Grade A dairy farmers and any other receipts allocated to Class I milk the same as is required of pool plants. Obviously, the second option necessitates as much verification of the receipts and utilization by the market administrator as at a pool plant. Accordingly, the provisions of the order relative to reporting by handlers operating nonpool plants and payments to the producer-settlement fund and for administrative assessments by such handlers should be revised.

The present maximum administrative assessment rate of 3.0 cents per hundredweight on producer milk and other source milk allocated to Class I at pool plants and on Class I sales disposed of in the marketing area by nonpool plants has been sufficient to meet the expense of administering Order No. 46. From time to time when income exceeded necessary expenses, the rate has been reduced below the maximum by the Secretary as provided by the order. The current rate is 2.5 cents per hundredweight. The expansion of the marketing area will bring under regulation, either fully or partially, a number of additional plants. These plants are more widely scattered than the presently regulated plants and the relative cost of administering the order may be increased. However, in view of the fact that the currently effective rate is less than 3.0 cents, it is concluded that the maximum rate of 3.0 cents will be appropriate for the marketing area, as expanded, and should not be changed at this time.

(b) Class I price. The Class I price differential should be increased from \$1.25 to \$1.30 for the first 14 months after the effective date of this amendment and provision should be made for a supply-demand adjuster to become operative after the end of such 14-month period.

The Class I price differential of \$1.25 was first incorporated in the order in 1951. This differential has been in effect since that date except for short-term amendments effective October 1952 through February 1953 and May through July 1956. Producers proposed the Class I price differential be increased to \$1.45.

Class I sales under the order have increased in each year since 1940—the first year for which data are available from the record. During the 12 months immediately preceding the hearing Class I sales reached a level of 50 percent above the 1951 level. Producer receipts on the other hand reached an all-time high in 1957. From 1951 through 1957 producer receipts increased about 58 percent but in 1958 and the first six months of 1959 producer receipts declined from the 1957 level.

During the 12 months immediately preceding the hearing (July 1958 through June 1959) producer receipts were 137 percent of Class I sales as compared with 141 percent for the corresponding period of 1957-58 and 150 percent for the corresponding period of 1956-57. During the four months of October through January, when receipts are normally lowest in relation to Class I sales, the ratios of receipts to sales were 140 in 1956-57, 133 in 1957-58 and 124 in 1958-59. The 124 relationship prevailed in each month of this four-month period in 1958-59. A relationship of 124 percent does not indicate a shortage of producer milk to supply the Class I needs of this market. Although it was necessary for the cooperative association to import some milk from outside sources in each month of this period to supply handlers with their day-to-day requirements of Grade A milk, sales of Class I milk by the cooperative were made also to nonpool plants outside the market. Such sales, of course, could be made from the reserve supplies accumulated over weekends and represent milk not needed by the market at that particular time of the week. The association assumes the responsibility for balancing supply among handlers by procuring milk from outside sources. The supply of producer milk, therefore is allocated among plants in accordance with their needs in an effective manner. In spite of this fact, it was necessary for the association to import limited quantities of milk from outside sources in several months of 1958-59.

An annual average relationship of producer milk receipts to Class I sales of 137 percent which prevailed in the Louisville market during the 12-month period ending with June 1959 is reasonable and necessary to provide an adequate supply of Grade A milk to meet the requirements of this market.

To arrest the apparent trend toward decreasing producer receipts in relation to Class I sales and to promote stabilization of the market at about the present supply sales relationships, provision should be made to temporarily increase the Class I price differential to \$1.30 and to provide for any further adjustment in the present method of establishing the Class I price through a supply-demand adjuster to become effective at the termination of the increase in the Class I differential.

Sufficient time should be allowed for the proposed increase in the Class I differential to assert its influence before further adjustments are made in the Class I price. The effective date for the supply-demand adjuster and the resumption of the present \$1.25 differential should be delayed, therefore, until 15 months after the effective date of this increase. Because of the similarity and to a considerable extent the overlapping of the procurement and sales areas of handlers located in the present and the added portion of the marketing area, the seasonal pattern of receipts and the utilization of milk should be very similar. Although any differences in the overall utilization percentages caused by including additional milk in the pool would be negligible, the delaying of the effective date of the supply-demand adjuster for 15 months will make it possible to have data for the enlarged marketing area for a full year to incorporate in the standard utilization percentages of the supply-demand adjuster when it becomes

The purpose of a supply-demand adjuster is to change the Class I price in response to an indicated trend away from the "normal or desired" relationship of producer receipts to Class I sales. A supply-demand adjuster provides automatic and prompt changes in the Class I price and tends to avoid the necessity for hearings and the delay necessarily associated with the order amendment process. The automatic supply-demand adjustment of prices, permits the maintenance of intermarket alignment of Class I prices based on a longterm and general economic considerations, and at the same time provides a method for reflecting relative differences in local supply-demand conditions in the individual marketing areas. A supplydemand adjuster also will tend to reflect differences between nationwide conditions affecting basic or manufacturing milk prices (on which Class I prices are based) and conditions existing in a particular milkshed.

It is important to announce supplydemand adjustments at the beginning of each month as is customary in the Louisville market for the announcement of the Class I price. Experience has shown that supply-demand adjustments based on supply and sales relationships for the most recent two-month period (for which data are available at the time prices are announced) in relation to the "desired or normal relationship" are reliable indicators of changes in market

conditions. In order to apply this method of adjustment, "standard utilization ratios" must be developed for each two-month period which will reflect the seasonal variation in supply-sales relationships. Because there has been a gradual shift in the seasonal pattern of this relationship in the Louisville market, it is desirable that a method be provided whereby the seasonal pattern of the standard utilization ratios will be changed automatically in accordance with such shifts. The seasonality index which is used to convert the annual level relationship (137) to a monthly basis should be determined, therefore, on the basis of the average seasonal relationship which prevailed during the most recent three years.

In addition to seasonal influences, the utilization percentage (relationship of producer receipts to Class I sales) for any given two-month period may be affected also by an upward or downward trend in these relationships over a period of time. It is this trend that the supply-demand arrangement is intended to measure. Therefore, compensating measures must be taken to eliminate the effects of such trends on the standard utilization percentages. This should be accomplished in two ways: (1) The average utilization percentage for the two months in each year should be expressed as a ratio of the moving average for the most recent 24 months, ending with the third preceding month, and (2) to the extent, if any, that the standard utilization percentages applied during the most recent 12-month period is above or below the annual level of 137, the standard utilization percentage for the current months should be adjusted accordingly. In other words, the trend adjustments are for the purpose of maintaining the standard utilization percentages at an annual level of 137.

Stability in the supply-demand adjustments should be promoted by providing (1) that the Class I price will not be adjusted unless the utilization percentage applicable for the current month deviates significantly (two points or more) from the standard utilization percentage, (2) an arrangement of brackets to eliminate changes in the adjustment on the basis of minor changes in the utilization percentages from month-tomonth, and (3) a maximum supplydemand adjustment beyond which no further changes will be made in the price without the reappraisal of marketing conditions at a public hearing. An average rate of adjustment of approximately 3 cents per point of variation between the "current utilization percentage" and the "standard utilization percentage" with a maximum adjustment of 50 cents, would be appropriate for adjustment of Class I price in this market. The provision of the attached order provides the necessary mechanics for applying a supply-demand adjuster in accordance with the objectives heretofore set forth.

(c) Class III price. The months of January through March should be included in the period for which the Class III price is the same as the basic formula

At present the Class III price for the months of January through August is the higher of the average of prices announced by seven local manufacturing milk plants or a butter-nonfat dry milk (roller process) formula. During other months the basic formula price is used. The basic formula price is the higher of a butter-nonfat dry milk (roller and spray) formula, the seven local manufacturing plant price, a butter-cheese formula and the average of the prices paid by 12 Midwest condenseries. Producers proposed that the basic formula price be used also for the months of January through March.

During January through February 1959, the seven local manufacturing plant price determined the Class III price. In March, the butter-dry milk formula was higher than the manufacturing plant price by two cents. During the months of January through March of 1958 and 1959 the basic formula price exceeded the Class III price on the average of 26 and 21 cents, respectively. The butter-dry milk formula was the basic formula price in five of the six months in these periods.

Several of the seven local manufacturing plants afford an outlet for reserve supplies of milk from this market. These plants pay premiums above their announced prices to farmers for milk purchased from dairy farmers who are equipped to cool their milk on the farm. Premiums are also paid for delivery of certain minimum average daily volumes. These premiums range from 15 to 25 cents per hundredweight. Producers supplying the fluid market would meet the qualifications for these premiums.

As previously mentioned herein, the producers' association handles and markets a substantial portion of the reserve supplies of milk from this market. The association has announced its willingness to handle the reserve supplies from all handlers who purchase their milk supply primarily from the association. The association has been able to dispose of reserve supplies of milk to manufacturing plants at prices above the prices established by the order for Class III milk. Such sales of milk and other offers to buy milk by manufacturing plants have been made on the basis of the order Class III price plus amounts about equal to the difference between the basic formula and the Class III price. The basic formula price, therefore, reflects the competitive price for manufacturing milk during the months of January through March.

Certain handlers objected to the application of the basic formula price for manufacturing milk during the months of January through March on the basis that their costs would be increased and that certain Class III operations were conducted at a loss at present prices. It is essential, however, particularly under a marketwide pool, that Class III prices be at least equal to the competitive price for manufacturing milk in the area. This is important to assist in the allocation of milk supplies among plants in accordance with their needs for milk in the higher price utilization classes and thus maximize returns to producers for

During the period of September through March there frequently is also a demand for fluid milk for Class I disposition by distributors located in other markets. Such sales are made by the cooperative association on the basis of the Class I price established by the order. An increase in the Class III price will remove any undue advantage to handlers of using or diverting reserve supplies of milk in manufacturing uses. It may tend to encourage its disposal in fluid markets with returns to producers at the higher Class I price.

In order to maintain the established relationship between the price for skim milk and butterfat in Class III uses, the Class III butterfat differential of .12 times the price of butter which is now applicable during the months of September through December should be extended to apply to the months of Sep-

tember through March.

Provision should be made in the order for the use of equivalent prices. If for some reason a price quotation is not announced or published as required for use by the market administrator for the determination of prices, provisions should be made for the market administrator to use a price as determined by the Secretary to be equivalent to the price which is required. The provision incorporated in the attached order is the same as the corresponding provision contained in other Federal orders.

(d) Location adjustments. The scheddule of location adjustment rates should be revised and Lexington, Kentucky should be added as a basing point for

applying such adjustments.

Under the present order location adjustments of the Class I price and of the uniform price to producers are applicable to milk at plants located more than 25 miles from the City Hall in Louisville. Producers propose that Lexington be added as a basing point and that no location adjustments apply at plants located less than 85 miles from the closest of the two basing points. At present all pool plants are located within a radius of 25 miles from Louisville and thus no location adjustments are applicable to producer milk under the order. All of the milk for the proposed expanded marketing area moves directly from farmers to distributing plants, or to the equalization plant operated by the Falls Cities Cooperative Milk Producer's Association located within the City of Louisville. The present location adjustment provisions of the order would not be appropriate for the marketing area as proposed to be expanded. As previously concluded in this decision, the economic conditions surrounding the procurement and sale of milk are similar throughout the expanded marketing area and the level of Class I prices should be uniform throughout this area. The present location adjustment arrangement would provide for different prices at different locations within this area. The radius within which no adjustment applies, therefore, should be extended. Because the marketing area contains two major centers of consumption-Louisville and Lexington—it is economically sound to provide for location adjustments at distant plants based on the in series, starting with Class II milk. location of such plants in relation to the nearer of these two cities. Because the proposed marketing area is relatively large, all producer milk is moved directly from farms mostly in bulk farm pickup tanks to the marketing area; and, there is need to provide a level of Class I price differentials under this order at distant plants in close alignment with that in neighboring Federal order markets, no location adjustments should apply at plants located less than 85 miles from the nearer of the two basing points. Presently there are no country plants serving the market. Milk within the 85mile radius can be moved to this market directly from farms more efficiently than by assembling at country plants and then trucking such milk to city distributing plants.

A 15-cent per hundredweight adjustment should apply at plants located more than 85 miles but less than 95 miles from the nearer of the basing points and 1.5 cents per hundredweight should be added for each additional 10 miles. These rates approximate the cost of moving milk by efficient means from distant plants to the marketing area and conform closely to the rates applied under other Federal orders. This schedule of adjustments will provide the same Class I price at all plants located within the marketing area. The resulting Class I price differentials under this order at locations in or near other Federal order markets to the west and north, from which some milk is disposed of in the proposed marketing area, will be in close alignment with the Class I price differentials in such other areas.

(e) The method of determining the amount of money added to the pool during the month of December under the fall incentive plan should be changed.

Presently the order provides that the funds set aside from the pool during the months of April through July shall be added to the pool in four equal amounts for the months of September through December. This set-aside is handled separately in the producer-settlement fund. It is possible that minor debits or credits may result in the fund at the end of December because of errors in reporting producer milk receipts during this period. Provision should be made, therefore, for adding for the month of December the balance remaining in such fund at that time.

(4) The entire order should be republished to incorporate the amendments decided upon herein together with necessary conforming and clarifying changes.

With the change in the name of the marketing area and the adoption of other amendments decided upon it will be necessary to make a number of conforming changes in other order provisions.

There is a need for clarification of the provisions for reclassification charges on beginning inventory which is allocated to Class I milk. Beginning inventory is considered as a current receipt. In the classification of current receipts of producer milk, under the allocation provisions, beginning inventory is subtracted, Because ending inventory is classified as Class II milk, a reclassification charge is necessary on inventory subtracted from Class I milk in the following month to promote equal cost of milk among handlers and to return to producers the utilization value for their milk. To the extent that there was producer milk classified as Class II in the preceding month, a reclassification charge is applied to price such milk identical with current receipts of producer milk. the extent that additional milk from inventory is allocated to Class I, a reclassification charge equal to the compensatory payment rate on other source milk is applied. It is possible, however, that other source milk which is in inventory may have come from sources regulated by another Federal order and has been priced as Class I milk under such order. It is not the intent of this order to place a compensatory payment on milk subject to the Class I pricing and pooling provisions of another order. Provision should be made, therefore, to exclude from reclassification charges an amount of other source milk in inventory equal to the other source milk subject to the Class I pricing and pooling provisions of another order which is allocated to Class II milk in the preceding month.

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The provisions for excluding from regulation under this order any plant which is subject to the pooling and pricing provisions of another Federal milk marketing order (§ 946.62) should be clarified. This should be accomplished by exempting from the provisions of this order such plants from which a greater volume of fluid milk products is disposed of on routes in the marketing area and to plants subject to full regulation under such other order than is disposed of in the Louisville-Lexington marketing area on routes and to pool plants during the current and each of the three immediately preceding months. Such a provision would clarify under which order a plant which sells milk in more than one marketing area is to be regulated, and thereby avoid the possibility of dual regulation. Use of the four-month period as a criterion would reduce the possibility that plants which supply nearly equal amounts of milk to this market and to other markets would be subject to different orders from monthto-month.

The expansion of the marketing area would subject a number of additional handlers to either partial or full regulation. Full regulation would be extended to the milk of approximately 300 additional dairy farmers. The publication of the entire order as proposed to be amended will facilitate a review of such amendments in relation to all other provisions and should be of benefit to those persons who become interested parties for the first time.

It is hereby ordered, therefore, that the order, as amended, and as hereby proposed to be further amended, be published in the FEDERAL REGISTER.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of

certain interested parties in the market. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and

determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth berein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended marketing agreement and order amending the order. The following order amending the order, regulating the handling of milk in the Louisville-Lexington, Kentucky marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out. The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended:

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### § 946.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington, Kentucky, marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act:

(2) The parity prices of milk, as determined pursuant to section 2 of the act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

### DEFINITIONS

### § 946.1 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.).

### § 946.2 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the United States authorized to exercise the powers or to perform the duties pursuant to the act of the said Secretary of Agriculture.

### § 946.3 Department.

"Department" means the United States Department of Agriculture or other Federal agency authorized to perform the price reporting functions specified in this part.

### § 946.4 Person.

"Person" means any individual, partnership, corporation, association or any other business unit.

### § 946.5 Cooperative association.

"Cooperative association" means any cooperative marketing association of producers which the Secretary determines:

(a) To be qualified under the provisions of the act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act"; and

(b) To have full authority in the sale of milk of its members and to be engaged in making collective sales of or marketing milk or its products for its members.

### § 946.6 Louisville-Lexington marketing area.

"Louisville-Lexington marketing area" hereinafter called the "marketing area" means all territory geographically located within the perimeter boundaries of Clark, Floyd, and Harrison Counties, Indiana and Jefferson, Bullitt, Meade, Hardin, Larue, Nelson, Spencer, Shelby, Oldham, Henry, Franklin, Anderson, Woodford, Scott, Fayette, Jessamine, Madison, Montgomery, Clark and Bourbon in the State of Kentucky including all municipal corporations and institutions, lying wholly or partially within such area, owned or operated by the Federal, State or local Governments.

### § 946.7 City plant.

"City plant" means a plant or other facilities, where milk is processed or packaged and from which a fluid milk product(s) which is permitted to be labeled as "Grade A" by health authority having jurisdiction in the marketing area is disposed of through a route(s).

#### § 946.8 Country plant.

"Country plant" means a milk plant, other than a city plant, which is approved by the appropriate health authority in the marketing area to supply milk, skim milk or cream to a city plant(s) for disposition as "Grade A" milk in the marketing area and at which milk is received from persons described in § 946.12(a) during the month.

#### § 946.9 Pool plant.

"Pool plant" means:

(a) A city plant, other than a plant operated by a producer-handler, which meets the following requirements:

(1) For each of the months of May through October not less than 30 percent and for each of the months of November through April not less than 50 percent of the fluid milk products received during the two months immediately preceding from dairy farmers described in § 946.12 (a), from country plants, and from pool plants in containers not larger than a gallon are disposed of as Class I milk from such plant during such two-month period to all outlets except such disposition to pool plants in containers larger than a gallon: Provided, That, if such utilization percentage for the two preceding months cannot be ascertained by the market administrator, the respective percentages shall apply to receipts and sales during the current month; and

(2) An amount of Class I milk equal to not less than 10 percent of the milk described in § 946.12(a) received directly from dairy farmers and country plants during the current month is distributed through routes in the marketing area.

(b) A country plant during any of the months of October through March in which not less than 10 percent of the receipts of milk at such plant from persons described in § 946.12(a) are delivered to a city plant in the form of milk, skim milk or cream;

(c) A country plant during the months of April through September from which more than 50 percent of the combined receipts of milk from persons described in § 946.12(a) during the preceding period of October through February were delivered to a city plant(s) in the form of milk, skim milk or cream, unless the operator of such plant notifies the market administrator in writing on or before March 15 of withdrawal of the plant from the pool for the months of April through September next following; and

(d) A country plant which is operated by a cooperative association and (1) 75 percent or more of the milk from persons described in § 946.12(a) who are members of such association is delivered during the month directly to the pool plant(s) of other handlers or transferred by such association to the pool plant(s) of other handlers or (2) such plant qualified as a pool plant pursuant to subparagraph (1) of this paragraph during each of the immediately preceding consecutive months of October through February.

#### § 946.10 Nonpool plant.

"Nonpool plant" means any milk manufacturing, processing or bottling plant other than a pool plant.

#### § 946.11 Handler.

"Handler" means (a) any person who operates a city plant or a country plant, and (b) any cooperative association with respect to milk diverted by it in accordance with the conditions set forth in § 946.13.

#### § 946.12 Producer.

"Producer" means any person, except a producer-handler, who produces milk which is:

(a) Approved by a duly constituted health authority for the production of milk for fluid disposition and which milk is permitted by the appropriate health authority in the marketing area to be labeled and disposed of as Grade A milk in the marketing area (this definition shall include approval of milk by the authority to administer the regulations governing the quality of milk acceptable to agencies of the U.S. Government for fluid consumption in its institutions or bases located in the marketing area during any month in which such milk is disposed of to such institutions or bases): Provided, That this definition shall not include any person whose milk is permitted on a temporary or emergency basis by such health authority in the marketing area to be labeled and disposed of as Grade A milk; and

(b) Received at a pool plant or diverted in accordance with the conditions set forth in paragraph (b) or (c) of § 946.13.

### § 946.13 Producer milk.

"Producer milk" means only that skim milk and butterfat contained in milk

from producers which is:

(a) Received directly from producers at a pool plant: Provided, That when withdrawals of milk are made at more than one pool plant from the same load delivered by farm tank pick-up truck and in the absence of agreement be-

(c) A country plant during the months
April through September from which ore than 50 percent of the combined ceipts of milk from persons described \$946.12(a) during the preceding peod of October through February were milk was withdrawn:

(b) Diverted from a pool plant to another pool plant or to a nonpool plant: Provided, That such milk so diverted shall be deemed to have been received at the pool plant from which it is diverted: Provided further, That this definition shall not include the milk of any person during any of the months of October, November, January, and February in which the milk of such person is diverted by a handler, except a cooperative association, to a nonpool plant for more than one-half of the days of delivery during the month: or

(c) Diverted by a cooperative association to a nonpool plant for the account of the cooperative association: *Provided*, That any milk so diverted shall be deemed to have been received by the cooperative association at a pool plant at the location of the pool plant from which

it is diverted.

#### § 946.14 Other source milk.

"Other source milk" means all skim milk and butterfat contained in:

(a) Receipts during the month in the form of fluid milk products except (1) fluid milk products received from pool plants, or (2) producer milk; and

(b) Products other than fluid milk products from any source (including those produced at the plant) except Class II products from pool plants, which are repackaged, reprocessed or converted to another product in the plant during the month.

### § 946.15 Producer-handler.

"Producer-handler" means any person who processes and packages milk from his own farm production, distributing any portion of such milk within the marketing area as Class I milk and who receives no milk from producers.

### § 946.16 Chicago butter price.

"Chicago butter price" means the simple average as computed by the market administrator of the daily wholesale selling prices (using the midpoint of any price range as one price) per pound of Grade A (92-score) bulk creamery butter at Chicago as reported by the Department of Agriculture during the month.

#### § 946.17 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, milk drinks (plain or flavored), cream, or any mixture in fluid form of skim milk and cream (except storage cream, aerated cream products; ice cream mix, evaporated or condensed milk, and sterilized products packaged in hermetically sealed containers).

#### § 946.18 Route.

"Route" means the operation of a plant store or a vehicle (including that operated by a vendor) through the means of which fluid milk products are disposed of to retail or wholesale stops in the marketing area other than to a milk plant.

#### MARKET ADMINISTRATOR

#### § 946.20 Designation.

The agency for the administration of this part shall be a market administrator, selected by the Secretary, who shall be entitled to such compensation as may be determined by, and shall be subject to removal at the discretion of, the Secretary.

### § 946.21 Powers.

The market administrator shall have the following powers with respect to this part:

- (a) To administer its terms and provisions;
- (b) To receive, investigate, and report to the Secretary complaints of violations;
- (c) To make rules and regulations to effectuate its terms and provisions; and (d) To recommend amendments to

### the Secretary. § 946.22 Duties.

The market administrator shall perform all duties necessary to administer the terms and provisions of this part, including but not limited to the following:

- (a) Within 45 days following the date on which he enters upon his duties, or such lesser period as may be prescribed by the Secretary, execute and deliver to the Secretary a bond, effective as of the date on which he enters upon such duties and conditioned upon the faithful performance of such duties, in an amount and with surety thereon satisfactory to the Secretary;
- (b) Employ and fix the compensation of such persons as may be necessary to enable him to administer its terms and provisions;
- (c) Obtain a bond in a reasonable amount and with reasonable surety thereon covering each employee who handles funds entrusted to the market administrator;
- (d) Pay out of the funds provided by \$ 946.88 the cost of his bond and of the bonds of his employees, his own compensation, and all other expenses (except those incurred under § 946.87) necessarily incurred by him in the maintenance and functioning of his office and in the performance of his duties;
- (e) Keep such books and records as will clearly reflect the transactions provided for in this part, and upon request by the Secretary, surrender the same to such other person as the Secretary may designate:

(1) Submit his books and records to examination and furnish such information and reports as may be requested by the Secretary;

- (g) Verify all reports and payments of each handler by audit of such handler's records and of the records of any other handler or person upon whose utilization the classification of skim milk or butterfat for such handler depends, or by such investigation as the market administrator deems necessary;
- (h) Prepare and disseminate to the public such statistics and such information as he deems advisable and as do not reveal confidential information;
- (i) Publicly announce, at his discretion, unless otherwise directed by the Secretary, by posting in a conspicuous

place in his office and by such other means as he deems appropriate, the name of any person who, within 5 days after the date upon which he is required to perform such acts has not made reports pursuant to §§ 946.30 through 946.32, or payments pursuant to §§ 946.80 through 946.86;

(j) On or before the 15th day after the end of each month, report to each cooperative association, which so requests, with respect to producer milk caused to be delivered by such association or by its members to each handler during the month: (1) The percentage of such receipts classified in each class; and (2) the percentage relationship of such receipts to the total pounds of Class I milk available to assign to such receipts exclusive of the Class I milk disposed of by such handler to the pool plant(s) of other handlers and to nonpool plants. For the purpose of these reports, the milk received from such association shall be treated on a pro rata basis of the total producer milk received by such handler during the month;

(k) Publicly announce, by posting in a conspicuous place in his office and by such other means as he deems appropriate, and notify each handler in writing the prices and butterfat differentials determined for each month as follows:

(1) On or before the 12th day after the end of each month, the minimum prices for each class of milk computed pursuant to § 946.51, and the butterfat differentials for each class computed pursuant to § 946.52; and

(2) On or before the 12th day after the end of each month, the uniform price computed pursuant to § 946.71, and the butterfat differential computed pursuant to § 946.81;

(1) On or before the 13th day after the end of each month, the market administrator shall mail to each handler, at his last known address, a statement showing:

(1) The net obligation computed for such handler pursuant to § 946.70; and

(2) The amounts to be paid by such handler pursuant to §§ 946.61, 946.84, 946.87, and 946.88.

#### REPORTS, RECORDS, AND FACILITIES

### § 946.30 Reports of receipts and utiliza-

On or before the 7th day after the end of each month, each handler, except a producer handler, shall report for such month to the market administrator for each of his pool plants in the detail and on forms prescribed by the market administrator:

(a) The quantities of skim milk and butterfat contained in receipts of producer milk (including such handler's own farm production);

(b) The quantities of skim milk and butterfat contained in fluid milk products received from other pool plants;

- (c) The quantities of skim milk and butterfat contained in other source milk;
- (d) Inventories of fluid milk products on hand at the beginning and end of the month;
- (e) The utilization of all skim milk and butterfat required to be reported.

pursuant to this section, including a separate statement of the disposition of Class I milk other than on routes operated wholly or partially within the marketing area; and

(f) Such other information with respect to his receipts and utilization of butterfat and skim milk as the market administrator may prescribe.

### § 946.31 Payroll reports.

On or before the 20th day after the end of each month, each handler shall submit to the market administrator his producer payroll for deliveries during the month which shall show (a) the total pounds of milk received from each producer and cooperative association and the average butterfat content of such milk, (b) the prices paid and the amount of payment to each producer and cooperative association, and (c) the nature and amount of any credits, deductions, or charges involved in such payments.

#### § 946.32 Other reports.

(a) Each producer-handler shall make make reports to the market administrator at such time and in such manner as the market administrator may prescribe.

(b) Each handler shall report to the market administrator, as soon as possible after first receiving milk from any producer, the name and address of such producer, the date upon which such milk was first received, and the plant at which such milk was received: *Provided*, That milk diverted to a pool plant as described in § 946.13(b) need not be reported pursuant to this paragraph.

(c) On or before the 10th day after the request of the market administrator, such handler shall submit a schedule of rates which are charged and paid for the transportation of milk from the farm of each producer to such handler's plant. Changes in such schedule of rates and the effective dates thereof shall be reported to the market administrator within 10 days.

### § 946.33 Records and facilities.

Each handler shall maintain and make available to the market administrator or to his representative during the usual hours of business such accounts, records, and reports of his operations and such facilities as are necessary for the market administrator to verify or establish the correct data with respect to:

(a) The receipts and utilization of producer milk and other source milk;

(b) The weights and tests for butterfat and other content of all milk, skim milk, cream and milk products handled;

(c) Payments to producers, including supporting records of all deductions and written authorization from each producer of the rate per hundredweight or other method for computing hauling charges on such producer milk; and

(d) The pounds of skim milk and butterfat contained in or represented by all milk, skim milk, cream and other milk products on hand at the beginning and end of each month.

### § 946.34 Retention of records.

All books and records required under this part to be available to the market administrator shall be retained by the handler for a period of three years to begin at the end of the calendar month to which such books and records pertain: Provided, That if, within such three-year period, the market administrator notifies the handler in writing that the retention of such books and records, or of specified books and records, is necessary in connection with a proceeding under section 8c(15)(A) of the act or a court action specified in such notice, the handler shall retain such books and records, or specified records and books until further written notification from the market administrator. In either case the market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

#### CLASSIFICATION

### § 946.40 Skim milk and butterfat to be classified.

All skim milk and butterfat which is required to be reported pursuant to §§ 946.30 and 946.61 shall be classified by the market administrator pursuant to the provisions of §§ 946.41 through 946.46.

#### § 946.41 Classes of utilization.

Subject to the conditions set forth in §§ 946.42 through 946.44, the classes of utilization shall be as follows:

- (a) Class I milk. Class I milk shall be all skim milk (including concentrated or reconstituted skim milk solids) and butterfat (1) disposed of in fluid form as milk, skim milk, cream (including sour cream), buttermilk, milk drinks (plain or flavored), except skim milk and butterfat disposed of in fluid form for livestock feed: (2) disposed of as any fluid milk product which is required by the appropriate health authority in the marketing area to be made from milk, skim milk, or cream from sources approved by such authority; and (3) not accounted for as Class II or Class III milk.
- (b) Class II milk. Class II milk shall be all skim milk and butterfat the utilization of which is established as used to produce (1) cottage cheese, ice cream, ice cream mix, eggnog, frozen desserts, and milk (or skim milk) and cream mixtures containing 8.0 percent or more butterfat disposed of in containers or dispensers under pressure for the purpose of dispensing a whipped or aerated product, and (2) in inventories of fluid milk products.
- (c) Class III milk. Class III milk shall be all skim milk and butterfat, the utilization of which is established: (1), As used to produce any product other than those specified in paragraphs (a) or (b) of this section, (2) as disposed of for livectock feed, (3) as disposed of in bulk to bakeries, candy or soup manufacturers, and other commercial food manufacturing establishments which do not dispose of fluid milk products, and (4) in plant shrinkage of skim milk and butterfat in receipts of producer milk and in other source milk computed pursuant to § 946.42.

### § 946.42 Unaccounted for skim milk and butterfat and plant shrinkage.

Skim milk and butterfat received at a handler's pool plant(s) in excess of such handler's established utilization of skim milk and butterfat pursuant to § 946.41, except paragraphs (a) (3) and (c) (4) shall be known as unaccounted for skim milk and butterfat and classified as follows:

- (a) Adjust such handler's receipts of producer milk by (1) deducting the pounds of skim milk and butterfat in producer milk diverted by such handler to a nonpool plant or to the pool plant of another handler without having been received for purposes of weighing and testing in the diverting handler's plant, (2) adding the skim milk and butterfat in producer milk received at the pool plant of such handler which was diverted from the pool plant of another handler;
- (b) Prorate the quantities of unaccounted for skim milk and butterfat respectively, between such handler's receipts of skim milk and butterfat, respectively, in producer milk as computed pursuant to paragraph (a) of this section and in other source milk received in the form of fluid milk products in bulk;
- (c) That portion of the quantities of unaccounted skim milk not to exceed five percent during the months of April through July and two percent during other months, and the quantities of butterfat not to exceed two percent in each month, of the skim milk and butterfat, respectively, in receipts of producer milk and other source milk applied pursuant to paragraph (b) of this section shall be known as "shrinkage" and classified as Class III milk: Provided, That if the quantities of skim milk and butterfat utilized and disposed of in milk and all milk products are not established by such handler all unaccounted for skim milk and butterfat prorated to receipts of producer milk pursuant to paragraph (b) of this section shall be classified as Class I milk:
- (d) That portion of the quantities of unaccounted for skim milk and butterfat which is in excess of the quantities of skim milk and butterfat, respectively, classified pursuant to paragraph (c) of this section shall be classified as Class I milk.

### § 946.43 Responsibility for classification of milk.

- (a) All skim milk and butterfat shall be Class I milk unless the handler who first receives such skim milk or butterfat can prove to the market administrator that such skim milk or butterfat should be classified otherwise.
- (b) Any skim milk or butterfat shall be reclassified if verification by the market administrator discloses that the original classification was incorrect.

### § 946.44 Transfers.

Skim milk or butterfat disposed of by a handler from a pool plant either by transfer or diversion shall be classified as follows:

(a) As Class I milk if transferred or diverted in the form of a fluid milk product to a pool plant of another handler, unless utilization in another class

is mutually indicated in the reports submitted to the market administrator by both handlers pursuant to § 946.30 on or before the 7th day after the end of the month: Provided, That if upon inspection of the records of the transfereehandler it is found that an equivalent amount of skim milk or butterfat, respectively, was not actually used in such indicated use, the remaining quantity shall be classified as Class I milk: And provided further, That if either or both handlers received other source milk the skim milk or butterfat so transferred or diverted shall be classified at both plants so as to allocate the highest-priced possible class utilization to the producer milk of both handlers;

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(b) As Class I milk if transferred or diverted to a producer-handler in the

form of a fluid milk product;

(c) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located less than 250 airline miles from the City Hall in Louisville, Kentucky, unless:

(1) The handler claims classification in another class in his report submitted to the market administrator pursuant to

§ 946.30;

- (2) The operator of the nonpool plant maintains books and records showing the receipts and utilization of all skim milk and butterfat at such plant which are made available if requested by the market administrator for verification;
- (3) An amount of skim milk and butterfat, respectively, of not less than that so claimed by the handler was used in products included in Class II and Class III milk:
- (4) The classification reported by the handler results in an amount of skim milk and butterfat in Class I and Class II milk claimed by all handlers transferring or diverting milk to such nonpool plant of not less than the amount of assignable Class I milk and Class II milk remaining after the following computation:
- (i) From the total skim milk and butterfat, respectively, in fluid milk products disposed of from such nonpool plant and classified as Class I milk and used to produce products in Class II milk, pursuant to the classification provisions of this order applied to such nonpool plant, subtract, in series beginning with Class I milk, the skim milk and butterfat received at such plant directly from dairy farmers who hold permits to supply "Grade A" milk and who the market administrator determines constitute the regular source of supply for such nonpool plant;
- (ii) From the remaining amount of Class I milk, subtract the skim milk and butterfat, respectively, in fluid milk products received from another market and which is classified and priced as Class I milk pursuant to another order issued pursuant to the act: Provided, That the amount subtracted pursuant to this subdivision shall be limited to such markets' pro rata share of such remainder based on the total receipts of skim milk and butterfat, respectively, at such nonpool plant which are subject to the pricing provisions of an order issued pursuant to the act;

(5) If the skim milk and butterfat, respectively, transferred by all handlers to such a nonpool plant and reported as Class I milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class I milk, pursuant to subparagraph (4) of this paragraph, an equivalent amount of skim milk and butterfat shall be reclassified as Class I milk pro rata in accordance with the total of the lower priced classifications reported by each of such handlers:

by each of such handlers;

(6) If the skim milk and butterfat, transferred by all handlers to such non-pool plant and reported as Class II milk pursuant to this paragraph is less than the skim milk and butterfat assignable to Class II milk pursuant to subparagraph (4) of this paragraph, less the amount of skim milk and butterfat received directly from "ungraded" dairy farmers at such nonpool plant, respectively, an equivalent amount of skim milk and butterfat shall be reclassified as Class II milk pro rata in accordance with the claimed Class III classification reported by each of such handlers;

(d) As Class I milk if transferred or diverted in the form of milk, skim milk, or cream in bulk to a nonpool plant located 250 airline miles or more from the City Hall in Louisville, Kentucky.

### § 946.45 Computation of the skim milk and butterfat in each class.

For each month, the market administrator shall correct for mathematical and for other obvious errors the report of receipts and utilization submitted by each handler and shall compute the pounds of skim milk and butterfat in each class for such handler: Provided, That if any of the water contained in the milk from which a product is made is removed before such product is disposed of by a handler, the hundredweight of skim milk disposed of in such product shall be considered to be an amount equivalent to the nonfat solids contained in such product, plus all of the water originally associated with such solids.

### § 946.46 Allocation of skim milk and butterfat classified.

After making the computations pursuant to § 946.45 the market administrator shall determine the classification of producer milk received at the pool plant(s) of each handler each month as follows:

(a) Skim milk shall be allocated in the

following manner:

(1) Subtract from the total pounds of skim milk in Class III milk the pounds of skim milk assigned to producer milk shrinkage pursuant to § 946.42(c);

(2) Subtract from the remaining pounds of skim milk in each class, in series beginning with Class III milk, the pounds of skim milk in other source milk which are not subject to the Class I pricing provisions of an order issued pursuant to the act;

(3) Subtract from the remaining pounds of skim milk in Class III milk an amount equal to such remainder, or the product obtained by multiplying the pounds of skim milk in producer milk by 0.05, whichever is less:

(4) Subtract from the remaining pounds of skim milk in each class, in

series beginning with Class III milk, the pounds of skim milk in other source milk which are subject to the Class I pricing provisions of another order issued pursuant to the act:

(5) Add to the pounds of skim milk remaining in Class III milk the pounds of skim milk subtracted pursuant to subparagraphs (1) and (3) of this paragraph:

(6) Subtract from the remaining pounds of skim milk in Class II and Class I milk, in series beginning with Class II milk, the pounds of skim milk contained in inventory of fluid milk products on hand at the beginning of the month;

(7) Subtract from the remaining pounds of skim milk in each class the skim milk in fluid milk products received from the pool plants of other handlers according to the classification of such products as determined pursuant to § 946.44(a);

(8) If the remaining pounds of skim milk in all classes exceed the pounds of skim milk received in producer milk, subtract such excess from the remaining pounds of skim milk in series beginning with Class III. Any amount of excess so subtracted shall be called "overage."

(b) Butterfat shall be allocated in accordance with the same procedure prescribed for skim milk in paragraph (a) of this section.

(c) Determine the weighted average butterfat content of producer milk remaining in each class computed pursuant to paragraphs (a) and (b) of this section.

#### MINIMUM PRICES

#### § 946.50 Basic formula price.

The basic formula price to be used in determining the price per hundredweight of Class I milk shall be the highest of the prices computed pursuant to paragraphs (a), (b), and (c) of this section and subparagraph (1) of § 946.51(c).

(a) The price per hundredweight computed by adding together the plus values pursuant to subparagraphs (1) and (2) of this paragraph:

(1) Add 20 percent to the Chicago butter price for the month and multiply by 3.8.

(2) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray and roller process, respectively, for human consumption, f.o.b. manufacturing plants in the Chicago area as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.2.

(b) The price per hundredweight resulting from the following formula:

- (1) Multiply by 8.53 the average of the daily prices per pound of cheese at Wisconsin Primary Markets ("cheddars," f.o.b. Wisconsin assembling points, cars or truckloads) as reported by the Department during the month;
- (2) Add 0.902 times the Chicago butter price for the month;
  - (3) Subtract 34.3 cents; and

(4) Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

(c) To the average of the basic or field prices per hundredweight reported to have been paid or to be paid for milk of 3.5 percent butterfat content received from farmers during the month at the following plants or places for which prices have been reported to the market administrator or to the Department:

#### Companies and Location

Borden Co., Mount Pleasant, Mich.
Borden Co., New London, Wis.
Borden Co., Orfordville, Wis.
Carnation Co., Oconomowoc, Wis.
Carnation Co., Richland Center, Wis.
Carnation Co., Sparta, Mich.
Pet Milk Co., Believille, Wis.
Pet Milk Co., Coopersville, Mich.
Pet Milk Co., Hudson, Mich.
Pet Milk Co., New Glarus, Wis.
Pet Milk Co., Wayland, Mich.
White House Milk Co., Manitowoc, Wis.
White House Milk Co., West Bend, Wis.

Add an amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 3.

### § 946.51 Class prices.

Subject to the provisions of §§ 946.52 and 946.53, the minimum prices per hundredweight to be paid by each handler for milk of 3.8 percent butterfat content received at his pool plant(s) from producers during the month shall be as follows:

- (a) Class I milk. The price of Class I milk shall be the basic formula price for the preceding month, rounded to the nearest tenth of a cent, plus \$1.30: Provided, That starting with the 15th month after the effective date of this amendment the Class I price shall be such basic formula price plus \$1.25, subject to a supply-demand adjustment computed as follows:
- (1) Calculate the percentage that total receipts of producer milk was of total Class I milk at all pool plants for each of the following periods:

(i) The 24-month period ending with the third preceding month, and

(ii) The two-month period ending with the second preceding month and the corresponding two-month period of each of the two preceding years;

(2) Determine the simple average of the percentages for the three two-month periods computed pursuant to subparagraph (1) (ii) of this paragraph and divide by the percentage for the 24-month period determined pursuant to subparagraph (1) (i) of this paragraph;

(3) Add to the quotient obtained pursuant to subparagraph (2) of this paragraph the corresponding ratios for each of the 11 months immediately preceding and divide by 12:

and divide by 12;

(4) Multiply 137 percent by the result obtained by dividing the ratio computed pursuant to subparagraph (2) of this paragraph by the ratio computed pursuant to subparagraph (3) of this paragraph;

(5) Determine the net deviation percentage by subtracting the percentage determined pursuant to subparagraph (4) of this paragraph from the percentage determined pursuant to subpara-

graph (1) (ii) of this paragraph for the second and third preceding months; and

(6) Determine the amount of the supply-demand adjustment from the following schedule:

Net deviation	ation Supply-demand	
percentage:	adjustment (c	ents)
+16 or over		50
+13 or +14		-40
+10 or +11		-30
+7 or +8		-20
-1-4 or +5		-10
+2 or -2		0
-4 or -5		+10
-7 or -8		+20
-10 or -11		+30
-13 or -14		+40
-16 or more		<del>-</del> 50

When the net deviation percentage does not fall within the tabulated brackets, the adjustment shall be determined by the adjacent bracket which is the same as or nearest to the bracket applicable for the previous month.

(b) Class II milk. The price for Class II milk shall be the higher of the basic formula price pursuant to § 946.50 or that computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent:

(1) Multiply the Chicago butter price by 4.56:

(2) Add an amount computed as follows: from the simple average, as computed by the market administrator, of the weighted averages of carlot prices per pound for nonfat dry milk solids, spray process for human consumption, f.o.b. manufacturing plants in the Chicago area, as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department, deduct 5.5 cents, and multiply by 8.2.

(c) Class III milk. The price of Class III milk for the months of September through March shall be the higher of the prices computed pursuant to § 946.50 (a) or subparagraph (1) of this paragraph and for the months of April through August the higher of the prices computed pursuant to subparagraphs (1) and (2) of this paragraph, rounded to the nearest tenth of a cent.

(1) From the average of the basic or field prices per hundredweight reported to the market administrator to have been paid or to be paid for ungraded milk of 4.0 percent butterfat content received from farmers during the month at plants at the following locations:

### Operator and Location

Armour Creameries, Elizabethtown, Ky. Armour Creameries, Springfield, Ky. Kraft Foods Co., Lawrenceburg, Ky. Kraft Foods Co., Paoli, Ind. Salem Cheese and Milk Co., Salem, Ind. Red 73 Creameries, Madison, Ind.
Producers Dairy Marketing Association,

Orleans, Ind.

Subtract the amount computed by multiplying the Chicago butter price for the month by 0.12 and then by 2.

(2) The price per hundredweight computed by adding together the plus values pursuant to subdivisions (i) and (ii) of this subparagraph:

(i) Add 15 percent to the Chicago butter price for the month and multiply by

(ii) From the simple average as computed by the market administrator of the weighted averages of carlot prices per pound for nonfat dry milk solids, roller process, for human consumption f.o.b. manufacturing plants in Chicago area as published for the period from the 26th day of the preceding month through the 25th day of the current month by the Department deduct 6.5 cents and multiply by 8.2.

#### § 946.52 Price adjustments to handlers.

- (a) Butter differentials. Tf weighted average butterfat content of milk received from producers allocated to Class I, Class II, or Class III, respectively, pursuant to § 946.46, for a handler is more or less than 3.8 percent, there shall be added to or subtracted from, as the case may be, the price for such class, for each one-tenth of one percent that such weighted average butterfat test is above or below 3.8 percent, a butterfat differential (computed to the nearest tenth of a cent), calculated for each class as follows:
- (1) Class I milk. Multiply by 0.125 the Chicago butter price for the preceding month.
- (2) Class II milk. For the months of September through December, multiply the Chicago butter price by 0.120, and for the months of January through August, multiply by 0.118.
- (3) Class III milk. For the months of September through March multiply the Chicago butter price by 0.12 and for the months of April through August multiply the Chicago butter price by 0.115.

#### § 946.53 Transportation differentials to handlers.

For producer milk which is received at a pool plant located 85 miles or more from the City Hall in Louisville or Lexington, Kentucky, whichever is nearer, by the shortest hard-surfaced highway distance as determined by the market administrator, and which is classified as Class I milk, the price specified in § 946.51(a) shall be reduced at the rate set forth in the following schedule according to the location of the pool plant where such milk is received from producers:

Distance from City Rate per hundred-Hall (miles): 85 but less than 95\_ weight (cents) For each additional 10 miles or fraction thereof an additional \_\_

Provided. That for the purpose of calculating such location differential, fluid milk products which are transferred between pool plants shall be assigned to any remainder of Class II and Class III milk in the transferee plant after making the calculations prescribed in § 946.46(a)(6), and the comparable steps in § 946.46(b) for such plant, such assignment to transferrer plants to be made in sequence according to the location differential applicable at each plant, beginning with the plant having the largest differential.

### § 946.54 Use of equivalent prices.

If for any reason a price quotation required by this part for computing class prices or for other purposes is not avail-

able in the manner described, the market administrator shall use a price determined by the Secretary to be equivalent to the price which is required.

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#### APPLICATION OF PROVISIONS

#### § 946.60 Producer-handlers.

Sections 946.40 through 946.46, 946.50 through 946.53, 946.61, 946.70, 946.71, and 946.80 through 946.89 shall not apply to a producer-handler.

#### § 946.61 Obligation of handlers operating a nonpool plant which is a city plant.

Each handler, except a producer-handler, in his capacity as the operator of a nonpool plant which is a city plant shall:

(a) On or before the 7th day after the end of the month make reports to the market administrator with respect to the disposition of Class I milk in the marketing area and such other information on the total receipts and utilization of skim milk and butterfat at such plant as the market administrator may require, except that a handler selecting the option provided in paragraph (c) of this section at the time his report is filed shall report in accordance with §§ 946.30 and 946.31

as though a pool plant;

(b) On or before the 15th day after the end of the month pay to the market administrator, unless such handler elects at the time of reporting pursuant to paragraph (a) of this section the option provided pursuant to paragraph (c) of this section, an amount (1) for deposit in the producer-settlement fund, equal to the rate of payment on unpriced milk pursuant to § 946.70(e) multiplied by the hundredweight of skim milk and butterfat disposed of from such plant as Class I milk (computed in accordance with § 946.45) in the marketing area on routes during such month, less the skim milk and butterfat received from a pool plant during the month and classified as Class I milk under this part; and (2) for administrative assessment, equal to the rate specified in § 946.88 with respect to Class I milk and all milk, skim milk and cream used to produce Class II and Class III products disposed of during the month on routes in the marketing area less the quantity of skim milk and butterfat received during such month from a pool plant; and

(c) On or before the 18th day after the end of the month pay an amount (1) for deposit into the producersettlement fund, equal to any plus amount remaining after deducting from the obligation that would have been computed pursuant to § 946.70 for such nonpool plant and for any country plant (meeting the requirements equivalent to § 946.9 (b) or (c)) which serves as a source of milk for such nonpool plant, if such plant(s) were a pool plant(s), (i) the gross payments made on or before the 17th day after the end of the month for milk received at such plant(s) during the month from dairy farmers meeting the conditions in § 946.12(a), and (ii) any payments to the producer-settlement funds under other orders issued pursuant to the Act applicable to milk handled at such plant during the month as a partially regulated plant under such

other orders: Provided. That in the application of § 946.44 for the purpose of this subparagraph, transfers or diversions of milk from such nonpool plant(s) to a pool plant shall be classified as Class I, Class II and Class III milk in the same ratio as other source milk is allocated to each class in such pool plant pursuant to § 946.46(a) (2) and the corresponding step of § 946.46(b): And provided further, in the application of § 946.46(a) (7) and the corresponding step of § 946.46(b), receipts of fluid milk products at such nonpool plant from a pool plant(s) shall be allocated from the class in which such products are classified at the pool plant pursuant to § 946.44 (c) or (d); and (2) for administrative assessment, equal to the amount which would have been computed pursuant to § 946.88, if such nonpool plant had been a pool plant during the month: Provided, That such amount shall be reduced by any amounts paid for the month as an administrative expense assessment determined on the basis of Class I milk disposed of on routes in other marketing areas pursuant to the terms under such other order issued pursuant to the Act: And provided further, That (i) if less Class I milk is disposed of from such plant on routes in the Louisville-Lexington marketing area than is disposed of during the month on routes in another marketing area(s) as defined in an order(s) issued pursuant to the Act, and (ii) if an administrative expense assessment is applied at such plant as if a fully regulated (pool) plant under such order pursuant to the order for the marketing area where the volume of Class I milk disposed of from such plant is greatest, no administrative expense assessment shall be applied under this order.

### § 946.62 Plants subject to other Federal

The provisions of this part shall not apply to a milk plant during any month in which the milk at such plant would be subject to the pricing and pooling provisions of another order issued pursuant to the Act unless such plant meets the requirements for a pool plant pursuant to § 946.9 and a greater volume of fluid milk products is disposed of from such plant to pool plants and to retail or wholesale outlets located in the Louisville-Lexington marketing area than in the marketing area regulated pursuant to such other order during the current month and each of the three months. immediately preceding: Provided, That the operator of a plant which is exempted from the provisions of this order pursuant to this section shall, with respect to the total receipts and utilization or disposition of skim milk and butterfat at the plant, make reports to the market administrator at such time and in such manner as the market administrator may require and allow verification of such reports by the market administrator.

#### DETERMINATION OF UNIFORM PRICE

### § 946.70 Net obligation of each handler.

The net obligation of each handler for milk received during each month from

producers shall be a sum of money computed by the market administrator as follows:

- (a) Multiply the quantity of producer milk in each class computed pursuant to § 946.46 by the applicable class price;
- Add together the resulting (h) amounts;
- (c) Add the amounts computed by multiplying the pounds of overage deducted from each class pursuant to § 946.46 by the applicable class prices;
- (d) Add the amount computed by multiplying the difference between the Class II price for the preceding month and the Class I price for the current month by the hundredweight of producer milk classified as Class II milk during the preceding month or the hundredweight of milk subtracted from Class I milk pursuant to § 946.46(a) (6) and the corresponding step of § 946.46 (b), whichever is less; and
- (e) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46(a)(2) and the corresponding step of § 946.46(b) by the price arrived at by subtracting from the Class I price adjusted by the Class I butterfat and transportation differentials:
- (1) For the months of January through September, the Class III price adjusted by the Class III butterfat differential; and
- (2) For the months of October through December the uniform price computed pursuant to § 946.71 adjusted by the Class I transportation differential and by a butterfat differential calculated by multiplying the total volume of producer butterfat in each class during the month by the butte fat differential for each class, dividing the resultant figure by the total butterfat in producer milk and rounding the resultant figure to the nearest one-tenth cent; and
- (f) Add the amount computed by multiplying the pounds of skim milk and butterfat subtracted from Class I milk pursuant to § 946.46(a)(6) and the corresponding step of § 946.46(b) which is in excess of the skim milk and butterfat applied pursuant to paragraph (d) of this section and the skim milk and butterfat subtracted from Class II milk pursuant to § 946.46(a) (4) and the corresponding step of § 946.46(b) in the preceding month by the applicable rate determined pursuant to paragraph (e) (1) or (2) of this section for the month,

#### § 946.71 Computation of uniform price.

For each month the market administrator shall compute the uniform price per hundredweight of milk of 3.8 percent butterfat content received from producers as follows:

- (a) Combine into one total the net obligations computed for all handlers who made the reports prescribed in § 946.30 for the month and who are not in default of payments pursuant to § 946.84 for the preceding month;
- (b) Subtract, if the average butterfat content of the producer milk included in these computations is greater than 3.8 percent, or add, if such average butterfat content is less than 3.8 percent an amount computed by multiplying the

amount by which the average butterfat content of such milk varies from 3.8 percent by the butterfat differential computed pursuant to § 94€.81 and multiply the resulting figure by the total hundredweight of such milk:

(c) Add an amount computed by multiplying the hundredweight of milk received from producers at each country plan by the appropriate zone differential provided in § 946.53.

(d) Subtract for each of the months of April, May, June, and July an amount computed by multiplying the total hundredweight of producer milk included in these computations by 12 percent of the simple average of the basic formula prices, computed to the nearest cent, for the 12 months of the preceding calendar year:

(e) Add an amount representing onehalf of the cash balance on hand in the producer-settlement fund after deducting the total amount of contingent obligations to handlers pursuant to § 946.85 (a) and the balance held pursuant to paragraph (d) of this section for payment pursuant to § 946.85(b);

(f) Divide the resulting total by the total hundredweight of producer milk included in these computations; and

(g) Subtract not less than 4 cents nor more than 5 cents from the amount computed pursuant to paragraph (f) of this section. The resulting figure shall be the uniform price for milk of 3.8 percent butterfat content received from producers at a handler's pool plant.

#### PAYMENTS

### § 946.80 Time and method of payment for producer milk.

Except as provided in paragraph (c) of this section, each handler shall make payment to each producer for milk received from such producer as follows:

- (a) On or before the last day of each month for milk received during the first 15 days of the month from such producer who has not discontinued delivery of milk to such handler, at not less than the Class III price for 3.8 percent milk for the preceeding month without deduction for hauling;
- (b) On or before the 17th day after the end of each month for milk received from such producer during such month. an amount computed at not less than the uniform price per hundredweight plus the per hundredweight payment provided by § 946.85(b) for the month, subject to the butterfat differential computed pursuant to § 946.81, and, plus or minus, adjustments for errors made in previous payments to such producer; and less (1) the payment made pursuant to paragraph (a) of this section, (2) the location differential pursuant to § 946.82. (3) marketing service deductions pursuant to § 946.87 and (4) proper deductions authorized by such producer which, in the case of a deduction for hauling, shall be in writing and signed by such producer or, in the case of members of a cooperative association which is marketing the producer's milk, by such association;
- (c) (1) Upon receipt of a written request from a cooperative association which the market administrator determines is authorized by its members to

collect payment for their milk and receipt of a written promise to reimburse the handler the amount of any actual loss incurred by him because of any improper claim on the part of the cooperrative association in lieu of payments pursuant to paragraphs (a) and (b) of this section, each handler shall pay to the cooperative association on or before the second day prior to the dates specified in paragraphs (a) and (b), respectively, of this section, an amount equal to the sum of the individual payments otherwise payable to such producers without the deductions provided by paragraphs (b) (3) and (4) of this section: Provided, That deductions for supplies authorized by such producer may be made. The foregoing payment shall be made with respect to milk of each producer whom the cooperative association certifies is a member effective on and after the first day of the month next following receipt of such certification through the last day of the month next preceeding receipt of notice from the cooperative association of a termination of membership or until the original request is rescinded in writing by the cooperative association.

(2) A copy of each such request, promise to reimburse and certified list of members shall be filed simultaneously with the market administrator by the cooperative association and shall be subject to verification at his discretion, through audit of the records of the cooperative association pertaining thereto. Exceptions, if any, to the accuracy of such certification by a producer claimed to be a member, or by a handler, shall be made by written notice to the market administrator and shall be subject to his determination.

(d) In making the payments to producers pursuant to paragraph (b) of this section, each handler shall furnish each producer a supporting statement which shall show for each month the following:

(1) The identity of the handler and of

the producer:

(2) The total pounds and the average butterfat content of milk received from such producer;

(3) The minimum rate or rates at which payment to such producer is required pursuant to this part;

(4) The rate which is used in making the payment if such rate is other than the applicable minimum rate;

(5) The amount or the rate per hundredweight and nature of each deduction claimed by the handler: and

(6) The net amount of payment to such producer.

(e) In making payments to a cooperative association pursuant to paragraph (c) of this section, each handler shall furnish to such cooperative association a statement which shall show: (1) The identity of the handler and of the producer, (2) the total pounds and the average butterfat content of milk received from such producer, and (3) the amount of deductions claimed by such handler.

### § 946.81 Producer butterfat differential.

In making payment to producers pursuant to § 946.80(b) each handler shall add to the uniform price not less than, or subtract from the uniform price not

more than, as the case may be, for each one-tenth of one percent that the average butterfat content of the milk received from the producer is above or below 3.8 percent, the amount set forth in the following schedule for the price range in which falls the Chicago butter price for the month during which such milk was received.

. Butterfat

	Dutterjut
	differential
Butter price range (cents):	(cents)
17.499 or less	2
17.50 to 22.499	21/2
22.50 to 27.499	3
27.50 to 32.499	31/2
32.50 o 37.499	4
37.50 to 42.499	
42.50 to 47.499	5
47.50 to 52.499	
52.50 to 57.499	
57.50 to 62.499	61/2
62.50 to 67.499	7 -
67.50 to 72.499	
72.50 to 77.499	
77.50 to 82.499	81/2
82.50 to 87.499	
87.50 to 92.499	
92.50 and over	

### § 946.82 Location differential.

In making payments to producers pursuant to § 946.80(b) a handler shall deduct from the uniform price, with respect to all milk received from producers at a pool plant, not more than the appropriate zone differential provided in § 946.53.

#### § 946.83 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the "producer-settlement fund" into which he shall deposit all payments made by handlers pursuant to §§ 943.61, 946.84, and 946.86 and out of which he shall make all payments pursuant to §§ 946.85 and 946.86: Provided, That payments due any handler shall be offset by payments due from such handler.

#### § 946.84 Payments to the producer-settlement fund.

On or before the 15th day after the end of each month, each handler shall pay to the market administrator any amount by which the net obligation of such handler for the month is greater than an amount computed by multiplying the hundredweight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat and location differentials.

### § 946.85 Payments out of the producersettlement fund.

(a) On or before the 16th day after the end of each month, the market administrator shall pay to each handler for payment to producers any amount by which the net obligation of such handler for the month is less than an amount computed by multiplying the hundred-weight of milk received by him from producers during the month by the uniform price adjusted for the producer butterfat differential: Provided, That if the balance in the producer-settlement fund is insufficient to make all payments pursuant to this paragraph, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as the necessary funds are available.

(b) On or before the 16th day after the end of each of the months of September, October, November and Décember, the market administrator shall pay out of the producer-settlement fund to (1) each handler on all milk for which payment is to be made to producers pursuant to § 946.80(b) for such month, and (2) to each cooperative association on all producer milk for which such association is receiving payments pursuant to § 946.80(c) for such month at the following rate per hundredweight: For the months of September through November, divide one-fourth of the aggregate amount set aside in the producer-settlement fund pursuant to § 946.71(d) during the immediately preceding period of April through July, and for the month of December, divide the balance remaining in such fund by the hundredweight of producer milk received by all handlers during the month (computed to the nearest cent per hundredweight).

### § 946.86 Adjustment of accounts.

(a) Whenever verification by the market administrator of payments by any handler discloses errors made in payments to the producer-settlement fund. the market administrator shall promptly bill such handler for any unpaid amount and such handler shall, within 15 days, make payment to the market administrator of the amount so billed. Whenever such verification discloses that payment is due from the market administrator to any handler, pursuant to § 946.85, the market administrator shall, within 15 days, make such payment to such handler. Whenever verification by the market administrator of the payment by a handler to any producer for milk received by such handler discloses payment of less than is required by § 946.80, the handler shall pay any amount so due not later than the time of making payment to producers next following such disclosure.

(b) Overdue accounts: Any unpaid obligation of a handler or of the market administrator pursuant to §§ 946.80, 946.84, 946.85, 946.86(a), 946.87 or 946.88 shall be increased one-half of one percent each month or fraction thereof, compounded monthly, until such obligation is paid.

### § 946.87 Marketing services.

(a) Except as set forth in paragraph (b) of this section, each handler, in making payments to producers pursuant to § 946.80(b), shall deduct 5 cents per hundredweight, or such amount not in excess thereof as the Secretary may prescribe with respect to all milk received by such handler from producers (other than such handler's own farm production) during the month and shall pay such deductions to the market administrator on or before the 15th day after the end of such month. Such moneys shall be used by the market administrator to verify weights, samples, and tests of milk received from such producers and to provide such producers with market information. Such services shall be performed in whole or in part by the market administrator or by an agent engaged by and responsible to him.

(b) Each cooperative association which is actually performing the services described in paragraph (a) of this section, as determined by the market administrator, may file with a handler a claim for authorized deductions from the payments otherwise due to its producer members for milk delivered to such handler. Such claim shall contain a list of the producers for whom such deductions apply, an agreement to indemnify the handler in the making of the deductions, and a certification that the association has an unterminated membership contract with each producer. In making payments to producers for milk received during the month, each handler shall make, in lieu of the deduction specified in paragraph (a) of this section, deductions in accordance with the association's claim and shall pay the amount deducted to the association within 15 days after the end of the month.

### § 946.88 Expense of administration.

As his pro rata share of the expense of administration of this part, each handler shall pay to the market administrator, on or before the 15th day after the end of the month, 3.0 cents per hundredweight, or such amount to be not in excess thereof as the Secretary may prescribe with respect to all receipts by such handler during the month of (a) milk from producers (including such handler's own farm production), and (b) other source milk classified as Class I milk pursuant to § 946.46. Each cooperative association which is a handler shall pay such pro rata share of expense on only that milk of producers caused to be diverted by such cooperative association to a nonpool plant and milk received from producers at a pool plant of such cooperative association.

### § 946.89 Termination of obligations.

The provisions of this section shall apply to any obligation under this part for the payment of money irrespective of when such obligation arose.

- (a) The obligation of any handler to pay money required to be paid under the terms of this part shall, except as provided in paragraphs (b) and (c) of this section, terminate two years after the last day of the calendar month during which the market administrator receives the handler's utilization report of the milk involved in such obligation, unless within such two-year period the market administrator notifies the handler in writing that such money is due and payable. Service of such notice shall be complete upon mailing to the handler's last known address, and it shall contain, but need not be limited to, the following information:
  - (1) The amount of the obligation;
- (2) The month(s) during which the milk, with respect to which the obligation exists, was received or handled; and
- (3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

respect to any obligation under this part, to make available to the market administrator or his representatives all books and records required by this part to be made available, the market administrator may, within the two-year period provided for in paragraph (a) of this section, notify the handler in writing of such failure or refusal. If the market administrator so notifies a handler the said two-year period with respect to such obligation shall not begin to run until the first day of the calendar month following the month during which all such books and records pertaining to such obligation are made available to the market administrator or his representatives.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under this part to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Any obligation on the part of the market administrator to pay a handler any money which such handler claims to be due him under the terms of this part shall terminate two years after the end of the calendar month during which the milk involved in the claim was received if an underpayment is claimed. or two years after the end of the calendar month during which the payment (including deductions or set-off by the market administrator) was made by the handler if a refund on such payment is claimed, unless such handler, within the applicable period of time, files, pursuant to section 8c(15)(A) of the act, a petition claiming such money.

### Effective Time, Suspension, or Termination

### § 946.90 Effective time.

The provisions of this part, or any amendment to this part, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to § 946.91.

### § 946.91 Suspension or termination.

Any or all provisions of this part, or any amendment to this part, shall be suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give and shall in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

### § 946.92 Continuing power and duty.

(a) If upon the suspension of termination of any or all provisions of this part, there are any obligations arising under this part the final accrual or ascertainment of which requires further acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination: Provided, That any such acts required to be performed by the market administrator shall, if the Secretary so directs, be per-

(b) If a handler fails or refuses, with formed by such other person, persons, or spect to any obligation under this agency as the Secretary may designate.

(b) The market administrator, or such other person as the Secretary may designate, shall (1) continue in such capacity until discharged, (2) from time to time account for all receipts and disbursements and, if so directed by the Secretary, deliver all funds or property on hand, together with the books and records of the market administrator, or such person, to such person as the Secretary shall direct, and (3) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property, and claims vested in the market administrator or such person pursuant to this part.

### § 946.93 Liquidation after suspension or termination.

Upon the suspension or termination of any or all provisions of this part, except §§ 946.34, 946.89, 946.91 through 946.93, the market administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary. liquidate the business of the market administrator's office and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions of this part, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the market administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable

### MISCELLANEOUS PROVISIONS

### § 946.100 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States to act as his agent or representative in connection with any of the provisions of this part.

#### § 946.101 Separability of provisions.

If any provision of this part, or its application to any person, or circumstances, is held invalid, the application of such provision and of the remaining provisions of this part to other persons or circumstances shall not be affected thereby.

Issued at Washington, D.C., this 30th day of December 1959.

S. T. WARRINGTON,
Acting Deputy Administrator.

[F.R. Doc. 60-29; Filed, Jan. 4, 1960; 8:48 a.m.]

### [7 CFR Part 970] .

# IRISH POTATOES GROWN IN MAINE Notice of Proposed Expenses and Rate of Assessment

Notice is hereby given that the Secretary of Agriculture is considering the approval of the expenses and rate of

assessment hereinafter set forth, which were recommended by the Maine Potato Administrative Committee, established pursuant to Marketing Agreement No. 122 and Order No. 70 (7 CFR Part 970), regulating the handling of Irish potatoes grown in the State of Maine, issued under the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601-674).

Consideration will be given to any data, views, or arguments pertaining thereto, which are filed with the Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, Washington 25, D.C., not later than 15 days following publication of this notice in the FEDERAL REGISTER. The proposals are as follows:

### § 970.207 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred by the Maine Potato Administrative Committee, established pursuant to Marketing Agreement No. 122 and Order No. 70, to enable such committee to perform its functions pursuant to the provisions of aforesaid marketing agreement and order, during the fiscal period ending August 31, 1960, will amount to \$58,375.00.

(b) The rate of assessment to be paid by each handler, pursuant to Marketing Agreement No. 122 and Order No. 70, shall be \$1.25 per railroad car, \$1.25 per truckload of 36,000 pounds or more, 80 cents per truckload of not less than 25,000 pounds, up to, but not including, 36,000 pounds, and 50 cents per truckload of less than 25,000 pounds, or the respective equivalent quantities, of potatoes handled by him as the first handler thereof during said fiscal period.

(c) The terms used in this section shall have the same meaning as when used in Marketing Agreement No. 122 and Order No. 70.

(Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674)

Dated: December 30, 1959:

S. R. SMITH,
Director,
Fruit and Vegetable Division.

[F.R. Doc. 60-28; Filed, Jan. 4, 1960; 8:48 a.m.]

### DEPARTMENT OF COMMERCE

Federal Maritime Board

[ 46 CFR Ch. II ]

[Docket No. 877]

### FOREIGN COMMERCE OF THE UNITED STATES

### Filing of Freight Rates

Whereas, the Board, in 46 CFR Part 235 (General Order 83) now requires every common carrier by water in foreign commerce to file schedules showing its rates and charges for the transportation of property in the export trade within a period of 30 days from the date such schedules become effective, and

Whereas, the Board in Docket No. 789, served June 13, 1957, determined that

authority is vested in the Board by section 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820), section 19, Merchant Marine Act, 1920, (46 U.S.C. 876), and section 204, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114) to issue rules pursuant to section 4, Administrative Procedure Act (5 U.S.C. 1003) requiring the filing with the Federal Maritime Board of schedules and all amendments thereto of all inbound rates, charges, rules, regulations, and practices established, observed, and assessed by all common carriers by water subject to the provisions of the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.) and engaged in the foreign import commerce of the United States including all of its Districts, Territories, and possessions, and

Whereas, the Board discontinued said Docket No. 789 without issuing rules relating to the filing of inbound freight rates, and

Whereas, it now appears that a rule requiring every common carrier by water in the foreign trade of the United States to file schedules showing its rates and charges for the transportation of property in both the export and import trade. not later than the date such rates and charges are established, is necessary for the administration of the regulatory provisions of the Shipping Act, 1916, as amended (46 U.S.C. 801 et seq.) including the investigation of formal and informal complaints concerning alleged violations of said Shipping Act, and is further necessary to enable exporters, importers and other interested persons to examine such schedules;

Now therefore, notice is hereby given that pursuant to section 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820), section 19, Merchant Marine Act, 1920 (46 U.S.C. 876), section 204, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), and section 4, Administrative Procedure Act (5 U.S.C. 1003), the Federal Maritime Board proposes to issue the following rule:

Schedules of common carriers by water in foreign commerce-Filing of schedules; contents. Every common carrier by water in foreign commerce shall file with the Federal Maritime Board schedules showing all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, between points in the United States, and foreign points on its own route; and, if a through route has been established with another carrier by water, all the rates and charges for or in connection with the transportation of property, except cargo loaded and carried in bulk without mark or count, between points in the United States on its own route and foreign points on the route of such other carrier by water. The schedules filed as aforesaid by any such common carrier by water in foreign commerce shall show the point from and to which each such rate or charge applies; and shall contain all the rules and regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates or charges.

Time for filing. Any schedule required to be filed as aforesaid, and any change,

modification or cancellation of any rate, charge, rule or regulation contained in any such schedule shall be filed as aforesaid on or before the date such schedule, change, modification or cancellation becomes effective. "Filing" shall constitute the date such schedule, change, modification or cancellation is received by the Board, except that any schedule, change, modification or cancellation which is established by parties outside the continental United States shall be transmitted to the Board by air and the date on which such air-mail is postmarked will be considered to be the date filed.

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New filings. Common carriers by water engaged in the import trade of the United States who do not have schedules on file with the Board at the time this rule becomes effective will be allowed a period of 30 days thereafter in which to make the initial filing of the required schedules of rates and charges.

Persons interested in the foregoing proposed rule may file for consideration by the Board, written statements and comments thereon (in triplicate) with the Secretary, Federal Maritime Board, Washington 25, D.C., by close of business on March 1, 1960.

Dated: December 29, 1959.

By Order of the Federal Maritime Board.

James L. Pimper, Secretary.

[F.R. Doc. 60-2; Filed, Jan. 4, 1960; 8:45 a.m.]

#### [ 46 CFR Ch. II ]

[Docket No. 878]

### FREIGHT TARIFFS Public Distribution

Notice is hereby given that pursuant to sections 15, 16 and 17, Shipping Act, 1916, as amended (46 U.S.C. 814, 815. and 816), section 19 of the Merchant Marine Act of 1920 (46 U.S.C. 876), section 204, Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), section 4, Administrative Procedure Act (5 U.S.C. 1003), the Federal Maritime Board is considering the adoption of the rule set forth below relating to a system of distribution of freight tariffs to the public by common carriers by water in the foreign commerce of the United States operating under freight conference agreements approved pursuant to said section 15, Shipping Act, 1916, as amended, and by other common carriers by water in the foreign commerce of the United States. The proposed rule is deemed advisable in the public interest, so that rate information may be made available to shippers, trade organizations, and others.

Every common carrier by water in the foreign commerce of the United States shall establish a system for the distribution of its schedules of rates and charges and rules and regulations pertaining thereto, for the transportation of property in the foreign trade of the United States to interested persons, free

or upon payment of a reasonable subscription fee. Such system shall provide for the distribution of schedules, and changes, modifications and cancellations thereof, immediately upon the establishment of said schedules, changes, modifications or cancellations.

Details as to such distribution system, including the proposed fee, if any, shall be furnished the Board within 50 days following the adoption of this rule by the Board, and thereafter, simultaneously with the filing of a carrier's initial schedule with the Board in accordance with the Board's rules. Any change ir such system, including a change in the subscription fee, shall be furnished the Board prior to its effective date.

Distribution of schedules, changes, modifications or cancellations thereof, may be accomplished by the carrier direct or through the use of a competent tariff publishing agent.

All persons interested in the foregoing proposed rule may file with the Secretary of the Federal Maritime Board, Washington 25, D.C., by close of business on March 1, 1960, written data, views and/or arguments thereon (in triplicate) which will be considered by the Board.

Dated: December 29, 1959.

By order of the Federal Maritime Board.

James L. Pimper, Secretary.

[F.R. Doc. 60-3; Filed, Jan. 4, 1960; 8:45 a.m.]

### DEPARTMENT OF HEALTH, EDU-CATION, AND WELFARE

Food and Drug Administration
[ 21 CFR Part 121 ]
VARIOUS SOLVENTS IN SPICE
OLEORESINS

Notice of Filing of Petition for Issuance of Regulations Establishing Tolerances

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b) (5), 72 Stat. 1786; 21 U.S.C. 348 (b) (5)), the following notice is issued:

A petition has been filed by Kalamazoo Spice Extraction Company, P.O. Box 591, Kalamazoo, Mich., proposing the issuance of regulations to establish tolerances for residues (in spice oleoresins) of solvents used in the extraction of spice oleoresins as follows:

arts per million 30	Percent
90	
00	<b>0</b> . 003 <b>0</b>
25	.0025
25	.0025
50	.0050
50	.0050
30	.0030
30	.0030
	25 25 50 50 30

Dated: December 28, 1959.

[SEAL] GEO. P. LARRICK, Commissioner of Food and Drugs.

[F.R. Doc. 60-14; Filed, Jan. 4, 1960; 8:46 a.m.]

### [ 21 CFR Part 121 ] FOOD ADDITIVES

Notice of Filing of Petition for Issuance of Regulation Establishing Tolerances for Sodium Lauryl Sulfate in Dried, Liquid, and Frozen Egg Whites

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), the following notice is issued:

A petition has been filed by Swift and Company, Union Stock Yards, Chicago 9, Illinois, proposing the issuance of regulations to establish the following tolerances for sodium lauryl sulfate as an emulsifying agent:

	ratis per			
	million	Percent		
Egg white solids	1,000	0.1		
Egg whites, liquid	125	.0125		
Egg whites, frozen	125	.0125		

Dated: December 24, 1959.

[SEAL] GEO. P. LARRICK, Commissioner of Food and Drugs.

[F.R. Doc. 60-15; Filed, Jan. 4, 1960; 8:46 a.m.]

### [ 21 CFR Part 121 ] FOOD ADDITIVES

Notice of Filing of Petition for Issuance of Regulation Establishing a Tolerance for Diethylcarbamazine in Medicated Dog Food

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786; 21 U.S.C. 348(b)(5)), the following notice is issued:

A petition has been filed by Corn Products Company, R.D. No. 2, Waverly, New York, proposing the issuance of a regulation to establish a tolerance of 66 parts per million (0.0066 percent) of diethylcarbamazine (1-diethylcarbamyl-4-methylpiperazine) as an anthelmintic in dog food for the elimination of large roundworms.

Dated: December 28, 1959.

[SEAL] GEO. P. LARRICK,

Commissioner of Food and Drugs.

[F.R. Doc. 60-26; Filed, Jan. 4, 1960; 8:48 a.m.]

# Public Health Service [ 42 CFR Part 73 ] BIOLOGIC PRODUCTS Purity Standards

Notice is hereby given that the Surgeon General of the Public Health Service, with the approval of the Secretary of Health, Education, and Welfare, proposes to revise Part 73. The proposed revision would strengthen and more clearly define the purity standards. Notice is also given that it is proposed, in the public interest, for the protection of the public health, to make any amendments that are adopted effective

immediately upon publication in the FEDERAL REGISTER. References are to section and paragraph designations set forth in the notice of proposed rule making, 24 F.R. 7835; changes from present designations are indicated in parentheses.

Inquiries may be addressed, and data, views and arguments may be presented by interested parties, in writing, in triplicate, to the Surgeon General, Public Health Service, Washington 25, D.C. All relevant material received not later than 30 days after publication of this notice in the FEDERAL REGISTER will be considered.

### § 73.1 [Amendment]

- 1. Amend § 73.1(r) (present § 73.1(p)) to read as follows:
- (r) "Purity" means freedom from extraneous matter in the finished product, whether or not harmful to the recipient or deleterious to the product.
- 2. Amend the heading of § 73.70 to read as follows:
- § 73.70 Tests prior to release required for each lot; manufacturing procedures to be designed to insure contined safety, purity, and potency.
- 3. Amend § 73.70 by adding at the end thereof the following sentence: "All products, including those for which specific tests are prescribed in this part, shall be manufactured in accordance with procedures designed to insure continued safety purity and potency."
- tinued safety, purity and potency."
  4. Amend § 73.74 (present § 73.70(e))
  to read as follows:

#### § 73.74 Purity.

- (a) Test for residual moisture. Each lot of dried product shall be tested for residual moisture and other volatile substances.
- (1) Procedure. The test for dried products shall consist of measuring the maximum loss of weight in a weighed sample equilibrated over anhydrous P2  $O_6$  at a pressure of not more than one mm. of mercury, and at a temperature of  $20^\circ$  to  $30^\circ$  C.
- (2) Test results; standard to be met. The residual moisture and other volatile substances shall not exceed one percent except that for thrombin, fibrinogen, streptokinase, and streptokinase-streptodornase, they shall not exceed three percent.
- (b) Test for pyrogenic substances. Each lot of any product intended for use by injection shall be tested for pyrogenic substances by intravenous injection into rabbits as provided in subparagraphs (1) and (2) of this paragraph: Provided, That notwithstanding any other provision of this part, the test for pyrogenic substances is not required for the following products: Products containing formed blood elements; normal horse serum; normal rabbit serum; bacterial, viral and rickettsial vaccines and antigens; toxolds, toxins, allergenic extracts; venoms; diagnostic substances and trivalent organic arsenicals.
- (1) Test dose. The test dose for each rabbit shall be at least 3 ml. per kilogram of body weight of the rabbit and shall be at least equivalent proportionately, on a body weight basis, to the maximum

single human dose recommended, except for the following: For globulins the test dose shall be at least one (1) ml. per kilogram of body weight of each rabbit; for plasma the test dose shall be at least three (3) ml. per kilogram of body weight of each rabbit; for fibrinogen (human), streptokinase, streptokinase-streptodornase and radioiodinated (I<sup>22</sup>) serum albumin (human), the test dose shall be at least equivalent on a body weight basis to the maximum single human dose recommended.

(2) Procedure. Products shall be tested for freedom from pyrogenic substances by intravenous injection of the test dose into three or more rabbits in overt good health and by recording for each rabbit a control temperature taken within one hour prior to injection, and three additional temperatures taken one, two, and three hours after injection. For purposes of subparagraph (3) of this paragraph, if there is no temperature increase over the control temperature (i.e., where the temperature remains unchanged or falls), the temperature rise shall be considered as zero. If there is an increase in temperature over the control temperature, the temperature rise shall be the difference between the highest of the three hourly readings and the control temperature reading.

(3) Test results; standard to be met. The results recorded for all rabbits used in all tests of a lot of a product shall be included in determining whether the standard for purity is met. The product fails to meet test requirements if one-half or more of all rabbits show a temperature rise of 0.6° C or more or if the average temperature rise of all rabbits is

0.5° or more.

(c) Equivalent methods. Modification of any procedure set forth in this section for the determination of the purity of a product shall be permitted whenever the manufacturer presents evidence to demonstrate that the modification will provide equal or greater assurance that the product meets the requirements for purity and the Surgeon General so finds and makes the finding a matter of official record.

(Sec. 215, 58 Stat. 690, as amended; 42 U.S.C. 216. Interpret or apply sec. 351, 58 Stat. 702, as amended; 42 U.S.C. 262)

Dated: December 15, 1959.

[SEAL]

JOHN D. PORTERFIELD, Acting Surgeon General.

Approved: December 29, 1959.

ARTHUR S. FLEMMING, Secretary.

[F.R. Doc. 60-33; Filed, Jan. 4, 1960; 8:49 a.m.]

### FEDERAL AVIATION AGENCY

[ 14 CFR Part 601 ]

[Airspace Docket No. 59-KC-51]

CONTROL ZONES

Modification

Pursuant to the authority delegated to me by the Administrator (§ 409.13,

24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.2054 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration modification of the Hutchinson, Kans., control zone by revoking the extension to the south based on the south course of the Hutchinson radio range. The present Hutchinson control zone is designated in part within an 8-mile radius of the Hutchinson Air National Guard Field, with an extension to the south based on the south course of the Hutchinson radio range extending from the radio range to a point 23 miles south of the radio range; to the north based on the north course of the Hutchinson radio range extending from the radio range to a point 10 miles north of the radio range; and to the southwest based on the Hutchinson VOR 222° radial extending from the Hutchinson Municipal Airport to a point 10 miles southwest of the VOR. The prescribed standard ADF instrument approach procedure for Hutchinson Air National Guard Field, based on the North Fork radio beacon and the south course of the Hutchinson radio range is being revised to restrict descent to at least 1,000 feet above the surface until passing the North Fork radio beacon. This action would eliminate the need for the south extension to the Hutchinson control zone.

If this action is taken, the south extension to the Hutchinson, Kans., control zone, which is presently designated within 2 miles either side of the south course of the Hutchinson radio range extending from the radio range to a point 23 miles south, would be revoked.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, 4825 Troost Avenue, Kansas City 10, Mo. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Administrator.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752: 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on December 29, 1959.

D. D. Thomas, Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-5; Filed, Jan. 4, 1960; 8:46 a.m.]

### [ 14 CFR Part 601 ]

[Airspace Docket No. 59-LA-57]

### **CONTROL ZONES**

#### Designation

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to § 601.1983 of the regulations of the Administrator, the substance of which is stated below.

The Federal Aviation Agency has under consideration designation of a control zone within a 3-mile radius of Buchanan Field, Concord, Calif. This control zone would provide protection for aircraft arriving and departing Buchanan Field during instrument flight rule weather conditions.

If this action is taken, a control zone would be designated within a 3-mile radius of Buchanan Field, Concord, Calif.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, 5651 West Manchester Avenue, P.O. Box 90007, Airport Station, Los Angeles 45, Calif. All communications received within forty-five days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency, Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Administrator.

This amendment is proposed under §§ 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C., on December 29, 1959.

D. D. Thomas, Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-6; Filed, Jan. 4, 1960; 8:46 a.m.]

### [ 14 CFR Parts 600, 601 ]

[Airspace Docket No. 59-WA-82]

### FEDERAL AIRWAYS AND CONTROL AREAS

### Modification of VOR Federal Airways and Associated Control Areas

Pursuant to the authority delegated to me by the Administrator (§ 409.13, 24 F.R. 3499), notice is hereby given that the Federal Aviation Agency is considering an amendment to §§ 600.6039, 601.6039, 600.6003 and 600.6155 of the Regulations of the Administrator, the substance of which is stated below.

VOR Federal airway No. 39 presently extends from South Boston, Va., to Presque Isle, Maine. VOR Federal airway No. 3 presently extends in part from Florence, S.C., to Raleigh-Durham, N.C. VOR Federal airway No. 155 presently extends in part from Chesterfield, S.C., to Raleigh-Durham, N.C.

The Federal Aviation Agency is considering the extension of Victor 39 southward from the South Boston VOR to the Pinehurst, N.C., VOR. The extension of Victor 39 would provide a bypass route around the high activity Raleigh-Durham and Fayetteville terminal areas for through traffic. Concurrent with this action, the Federal Aviation Agency is considering realigning the segment of Victor 3 between Florence and Raleigh-Durham and the segment of Victor 155 between Chesterfield and Raleigh-Durham, by designating these airways via the Pinehurst VOR. This would provide more precise navigational guidance on these airway segments. The control areas associated with Victor 3 and 155 are so designated that they will automatically conform with the modified airway. Accordingly, no amendment relating to these control areas would be required.

If these actions are taken, VOR Federal airway No. 39 and associated control areas would extend from Pinehurst, N.C., to Presque Isle, Maine, VOR Federal airway No. 3 would be redesignated in part from Florence, S.C., via Pinehurst, N.C., and Raleigh-Durham, N.C.; VOR Federal airway No. 155 would be redesignated in part from Chesterfield, S.C., via Pinehurst, N.C.; and Raleigh-Durham, N.C.

Interested persons may submit such written data, views or arguments as they may desire. Communications should be submitted in triplicate to the Regional Administrator, Federal Aviation Agency, P.O. Box 1689, Fort Worth 1, Tex. All communications received within forty-five days after publication of this notice in the Federal Register will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Agency officials may be made by contacting the Regional Administrator, or the Chief, Airspace Utilization Division, Federal Aviation Agency,

Washington 25, D.C. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received.

The official Docket will be available for examination by interested persons at the Docket Section, Federal Aviation Agency, Room B-316, 1711 New York Avenue NW., Washington 25, D.C. An informal Docket will also be available for examination at the office of the Regional Administrator.

This amendment is proposed under sections 307(a) and 313(a) of the Federal Aviation Act of 1958 (72 Stat. 749, 752; 49 U.S.C. 1348, 1354).

Issued in Washington, D.C. on December 29, 1959.

D. D. Thomas, Director, Bureau of Air Traffic Management.

[F.R. Doc. 60-7; Filed, Jan. 4, 1960; 8:46 a.m.]

# INTERSTATE COMMERCE COMMISSION

[ 49 CFR Part 10 ]

[No. 32153]

### UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

### Betterment and Depreciation Accounting—Railroads

At a general session of the Interstate Commerce Commission held at its office in Washington, D.C., on the 18th day of December A.D. 1959.

Investigation of the matters and things involved in this proceeding having been made, and the Commission, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which report is hereby made a part hereof: 1

It is ordered, That this proceeding, initiated by notice of proposed rule making published in the Federal Register (22 FR 3016) April 27, 1957, be, and it hereby is, discontinued; and,

It is further ordered, That this order be served on each railroad company subject to the provisions of the Interstate Commerce Act, as amended, and that notice be given to the general public by depositing a copy thereof in the office of the Secretary of the Commission at Washington, D.C., and by filing with the Director, Office of the Federal Register.

By the Commission.

[SEAL] HAI

HAROLD D. McCoy, Secretary.

[F.R. Doc. 60-21; Filed, Jan. 4, 1960; 8:47 a.m.]

### NOTICES

### DEPARTMENT OF THE INTERIOR

Bureau of Land Management
OUTER CONTINENTAL SHELF OFF
LOUISIANA AND TEXAS

Oil and Gas Lease Offer

Correction

In F.R. Doc. 59-10762, appearing at page 10411 of the issue for Tuesday, December 22, 1959 the following changes should be made:

On page 10414, the acreage entry for "La. 751" under "Louisiana Official Leasing Map No. 5" now reading "4395" should read "5000"; and an acreage entry of "4395" should be made for "La. 752".

### DEPARTMENT OF COMMERCE

Federal Maritime Board

[Docket No. 869]

### PACIFIC COAST-HAWAII AND AT-LANTIC/GULF-HAWAII GENERAL INCREASES IN RATES

### **Notice of Supplemental Orders**

Notice is hereby given that the Federal Maritime Board has entered, on the dates indicated, the following Fourteenth, Fifteenth and Sixteenth Supplemental Orders to the original order in this proceeding, dated September 10, 1959, which appeared in the Federal Register of September 23, 1959 (24 F.R. 7656):

Fourteenth Supplemental Order, dated December 21, 1959:

It appearing that, by the Original Order in Docket No. 869 served September 11, 1959, the Board instituted an investigation into and concerning the reasonableness and lawfulness of the rates, charges, regulations, and practices stated in certain schedules between Pacific Coast ports and Hawaii as well as from Hawaii to North Atlantic ports, effective September 14, 1959, including Matson Navigation Company F.M.B.-F. No. 87, as supplemented;

It further appearing that said Original Order provides in part that no change should be made in the rates, charges, regulations and practices stated in said schedules until the investigation instituted thereby had been terminated by final order of the Board, unless otherwise authorized by special permission of the Board: and

It further appearing that on December 7, 1959, Matson Navigation Company filed Special Permission Application No. 49, on behalf of the carriers participating in the aforesaid schedule, seeking authority to file the following changes in said schedule, effective 30 days' after the filing thereof:

<sup>&</sup>lt;sup>1</sup> Filed as part of the original document.

(1) Restore the 12½ percent increase on Items Nos. 605-A, 610-A, 685-A, 690-A, and 695-A applicable to onions and potatoes.

(2) Extend expiration dates to December 31, 1960, on the following:

Item No. 602, "Oil Refinery Vessels and Columns, received in cradles suitable for stowage by the Carrier on deck at cargo owner's risk."

Item No. 603, "Oil Refinery Pipe, Shaped,"

It further appearing, that Matson Navigation Company has agreed that if such schedule is permitted to go into effect without suspension, (1) to keep account of all freight moneys received by reason of the increased rates provided in such schedule commencing with the effective date of such schedule, and terminating on the effective date of the Board's order finally determining the reasonableness and lawfulness of the rates, charges, regulations and practices stated in said schedule; and (2) to refund to the person who paid the freight, upon proper authorization by the Board, any freight charges collected under said schedule during the said period which may by in excess of those determined by the Board to be just and reasonable;

It further appearing that the Board having found good cause therefor has on December 21, 1959, granted special permission to publish such changes on not less than 30 days' notice under Special Permission No. 3800: such special permission to be without prejudice to the right of the Board to suspend such schedule within the notice period, either upon receipt of protest thereto or upon its own motion:

It is ordered, That the Original Order herein is modified to the extent necessary to permit the publication and filing of the changes covered by such Special Permission No. 3800; and

It is further ordered, That the rates, charges, regulations and practices set forth in the schedule filed pursuant to such special permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, regulations and practices under schedules cancelled thereby, and that the special permission granted hereby shall be without prejudice to the Board's determination as to the lawfulness of the rates established pursuant hereto; and

It is further ordered, That copies of this Order shall be filed with said tariff schedules in the Office of the Federal Maritime Board; and

It is further ordered, That a copy of this order shall be forthwith served upon all respondents herein, and upon all protestants herein; and that this order be published in the Federal Register.

Fifteenth Supplemental Order, dated December 21, 1959:

It appearing that by the Original Order in Docket No. 869 served September 11, 1959, the Board instituted an investigation into and concerning the reasonableness and lawfulness of the rates, charges, regulations, and practices stated in certain schedules between Pacific Coast ports and Hawaii as well

as from Hawaii to North Atlantic ports, effective September 14, 1959, including Matson Navigation Company F.M.B.-F. No. 101, as supplemented; and

It further appearing that said Original Order provides in part that no change should be made in the rates, charges, regulations and practices stated in said schedules until the investigation instituted thereby had been terminated by final order of the Board, unless otherwise authorized by special permission of the Board; and

It further appearing that on December 7, 1959, Matson Navigation Company filed Special Permission Application No. 50 seeking authority to file a consecutively numbered supplement to F.M.B.-F. No. 101 upon 30 days' notice in order to make the following change thereto: Reduce the minimum size container which will be accepted for shipment under the provisions of the tariff in Rule 1(b) from 220 cubic feet to 144 cubic feet.

It further appearing that the Board having found good cause therefor has on December 21, 1959, granted special permission to publish such change on not less than 30 days' notice under Special Permission No. 3801; such special permission to be without prejudice to the right of the Board to suspend such schedule within the notice period, either upon receipt of protest thereto or upon its own motion.

It is ordered, That the Original Order herein is modified to the extent necessary to permit the publication and filing of the change covered by such Special Permission No. 3801; and

It is further ordered, That any rates, charges, regulations and practices set forth in the schedule filed pursuant to such special permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, regulations and practices under schedules cancelled thereby, and that the special permission granted thereby shall be without prejudice to the Board's determination as to the lawfulness of the rates established pursuant hereto; and

It is further ordered, That copies of this Order shall be filed with said tariff schedules in the Office of the Federal Maritime Board; and

It is further ordered, That a copy of this order shall be forthwith served upon all respondents herein, and upon all protestants herein; and that this order be published in the Federal Register.

Sixteenth Supplemental Order, dated December 18, 1959:

It appearing that by the Original Order in Docket No. 869 served September 11, 1959, the Board instituted an investigation into and concerning the reasonableness and lawfulness of the rates, charges, regulations, and practices stated in certain schedules between Pacific Coast ports and Hawaii as well as from Hawaii to North Atlantic ports, effective September 14, 1959, including Matson Navigation Company F.M.B.-F. No. 87, as Supplemented; and

It further appearing that said Original Order provides in part that no change should be made in the rates, charges,

regulations and practices stated in said schedules until the investigation instituted thereby had been terminated byfinal order of the Board, unless otherwise authorized by special permission of the Board; and

It further appearing that on December 11, 1959, as amended December 16, Matson Navigation Company filed Special Permission Application No. 51, on behalf of the carriers participating in the aforesaid schedule, seeking authority to remove the 12½ percent increase now applicable to Item No. 200–A in said tariff, effective on one day after the filing thereof: and

It further appearing that the Board, on December 18, 1959, has not found that good cause has been shown to publish such change on one day's notice, but has found good cause for the establishment of the proposed change on 30 days' notice and to that extent grants the application under Special Permission No. 3803, such Special Permission to be without prejudice to the right of the Board to suspend such schedule within the notice period either upon receipt of protests thereto or upon its own motion;

It is ordered, That the Original Order herein is modified to the extent necessary to permit the publication and filing of the changes, upon 30 days' statutory notice, covered by such Special Permission No. 3803; and

It is further ordered, That the rates, charges, regulations and practices set forth in the schedule filed pursuant to such Special Permission shall be subject to the investigation and hearing herein to the same extent as the rates, charges, regulations and practices under schedule cancelled thereby, and that the Special Permission granted hereby shall be without prejudice to the Board's determination as to the lawfulness of the rate published pursuant hereto; and

It is further ordered, That copies of this Order shall be filed with said tariff schedule in the Office of the Federal Maritime Board; and

It is further ordered, That a copy of this Order shall be forthwith served upon all respondents herein, and upon all protestants herein; and that this Order be published in the FEDERAL REGISTER.

By order of the Federal Maritime Board.

Dated: December 30, 1959.

James L. Pimper, Secretary.

[F.R. Doc. 60-27; Filed, Jan. 4, 1960; 8:48 a.m.]

### Maritime Administration [Docket No. S-103]

## MOORE-McCORMACK LINES, INC. Notice of Cancellation of Application and of Hearing

Notice is hereby given that the hearing scheduled to be held on January 6, 1960, in the above-cited matter, as contained in notice appearing in the Fed-

ERAL REGISTER issue of December 31, 1959 (24 F.R. 11113), has been cancelled.

Dated: December 31, 1959.

James L. Pimper, Secretary.

[F.R. Doc. 60-34; Filed, Jan. 4, 1960; 8:49 a.m.]

### Office of the Secretary

[Department Order 89 (Rev.)]

#### PATENT OFFICE

### **Organization and Functions**

**DECEMBER 1, 1959.** 

The material appearing in 21 F.R. 1665-67 of March 15, 1956 and 23 F.R. 8561 of November 1, 1958 is superseded by the following:

SECTION 1. Purpose. The purpose of this order is to describe the organization and define the functions of the Patent Office.

SEC. 2. Organization. .01 The Patent Office, a primary organization unit within and under the jurisdiction of the Department of Commerce, is headed by a Commissioner of Patents who shall report and be immediately responsible to the Assistant Secretary of Commerce for Domestic Affairs.

.02 The Commissioner of Patents, the First Assistant Commissioner and two Assistant Commissioners are appointed by the President, by and with the advice and consent of the Senate.

.03 The Patent Office shall consist of the following organization units:

1—Office of the Commissioner of Patents: Commissioner of Patents, First Assistant Commissioner of Patents, Assistant Commissioners of Patents.

2—Office of the Solicitor.

3—Board of Appeals.

4—Trademark Trial and Appeal Board.

5—Board of Patent Interferences.

6-Office of Research and Development.

7—Patent Examining Operation, including: Director, Patent Examining Operation; Patent Examining Groups; Classification Group.

8—Trademark Examining Operation, including: Director, Trademark Examining Operation; Trademark Examining Divisions; Trademark Classification and Search Division.

9—Office of Administration: Budget and Finance Division, Organization and Methods Division, Personnel Division, General Services Division.

10—Office of Information Services.

SEC. 3. Delegations of authority. .01
Pursuant to the authority vested in the
Secretary of Commerce by Title 35 U.S.C.
3 and 6, and Reorganization Plan No. 5
of 1950, and subject to such policies and
directives as the Secretary of Commerce
may prescribe, the Commissioner of Patents is hereby authorized to perform the
functions and exercise the authority
vested in the Secretary under Title 35,
U.S. Code and Chapter 22 of Title 15,

U.S. Code and any other existing or subsequent legislation with respect to the administration of patent and trademark laws as they relate to the granting of patents for inventions and the registration of trademarks.

.02 The Commissioner of Patents may redelegate the authority assigned herein to appropriate officials of the Patent Office and prescribe limitations, restrictions, and conditions in the exercise of such authority.

Sec. 4. Functions of the Office of the Commissioner of Patents. .01 The Commissioner determines the policies and directs the programs of the Patent Office and is responsible for the conduct of all activities of the Patent Office.

.02 The Assistant Commissioners shall perform the duties pertaining to the office of Commissioner assigned to

them by the Commissioner.

.03 The First Assistant Commissioner, or, in the event of a vacancy in that office, the Assistant Commissioner senior in date of appointment, shall fill the office of Commissioner during a vacancy in that office until a Commissioner is appointed and takes office. In the absence or unavailability of the Commissioner and the Assistant Commissioners, the Solicitor of the Patent Office is designated to perform the duties of Commissioner.

SEC. 5. Office of the Solicitor. .01 The Solicitor is responsible for the conduct of all litigation to which the Commissioner is a party, and directs the activities of the Office of the Solicitor.

.02 The Office of the Solicitor investigates legal and legislative matters for the Commissioner, and prepares opinions and decisions on legal questions.

SEC. 6. Board of Appeals. .01 The Board of Appeals is responsible for conducting hearings and rendering decisions on appeals from adverse decisions of examiners as to the patentability of inventions claimed in patent applications.

.02 The Board of Appeals consists of the Commissioner, the Assistant Commissioners, not more than fifteen examiners-in-chief (35 U.S.C. 3 and 7), and such pro tempore members as may be designated by the Commissioner.

SEC. 7. Trademark, Trial and Appeal Board. 01 The Trademark Trial and Appeal Board is responsible for hearing and deciding adversary proceedings involving interfering applications, oppositions to registration, cancellation petitions, and concurrent use proceedings, and for hearing and deciding appeals from final refusals of the trademark examiners to allow the registration of trademarks.

.02 The membership of the Trademark Trial and Appeal Board includes the Commissioner, the Assistant Commissioners, and such qualified employees as may be appointed by the Commissioner, at least three of whom shall hear each case.

SEC. 8. Board of Patent Interferences. .01 The Board of Patent Interferences conducts patent interferences proceedings and makes final determina-

tion in the Patent Office as to priority of invention. The Board of Patent Interferences also conducts proceedings, and makes final determinations in the Patent Office, respecting the right of the Atomic Energy Commission and of the Administrator of the National Aeronautics and Space Administration to take title to certain applications and patents.

.02 The Board of Patent Interferences consists of such examiners of patent interferences as may be appointed by the Commissioner, who designates one of them to act as Chairman. Three members constitute a Board of Patent Interferences in determining each question of priority or of title.

SEC. 9. Office of Research and Development. The Director of the Office of Research and Development directs and coordinates a research program concerned with developing a mechanized system for searching recorded knowledge and retrieving information for determining the patentable novelty of claimed inventions; conducts pilot operations to facilitate research and technical development; represents the Patent Office in arranging for the assistance and cooperation of public and private agencies in furtherance of program objectives; plans and coordinates the joint efforts of contributing agencies and the Patent Office; and coordinates the implementation of machine searching projects with the patent reclassification program.

Sec. 10. Patent Examining Operation. 01 The Director of Patent Examining Operation is responsible for the effective conduct of patent examining and patent classification functions of the Patent Office. The Director formulates and directs the execution of basic examining policies and practices; applies provisions of law relating to the security of applications; renders decisions on procedural and substantive matters; and has overall responsibility for the professional competence and productive efficiency of the examining corps.

.02 The major organizational components of the Patent Examining Operation comprise a number of Patent Examining Groups and a Classification Group, whose functions are:

1-Each Patent Examining Group comprises an Associate Director, as its head, and a number of patent examining divisions. The Associate Director is responsible for insuring the fullest effectiveness of operation in the various examining divisions assigned to him and maintaining relative uniformity of practice among them. He also fosters quantitative and qualitative improvements in the examining process; passes upon various actions proposed to be taken by examiners; and acts for the Commissioner in deciding petitions filed by applicants on matters not appealable to the Board of Appeals. Each patent examining division comprises a Primary Examiner and a number of assistant examiners and has jurisdiction of applications in assigned fields of inventions. The functions of the divisions are to determine the patentability of claimed inventions based on searches of prior art and application of statutory provisions; allow or

No. 2----5

reject the claims in applications on the basis of their findings; make holdings of abandonment; institute interferences proceedings to determine priority of invention; rule on certain motions in connection with interferences; and perform related duties.

2—The Classification Group, comprising an Associate Director, as its head, and several classification divisions, develops and maintains a system for the classification of patents in the various useful arts to provide a basic frame of reference for the guidance of patent examiners and the general public in making searches for novelty or infringement. The group also insures the effective use of this system in the classification of issued patents.

SEC. 11. Trademark Examining Operation. .01 The Director of Trademark Examining Operation is responsible for the effective conduct of trademark examination and trademark classification functions of the Patent Office. The Director formulates and directs the execution of basic examining and classification policies and practices relating to the registration of marks; insures that such policies comply with statutory and regulatory provisions, court decisions, and decisions of the Commissioner; and effects standards of performance for individuals and groups.

.02 The principal organizational units of the Trademark Examining Operation are the Trademark Examining Divisions and the Trademark Classification and Search Division, whose functions are as

follows:

1-The Trademark Examining Divisions, under the supervision of Primary Examiners, examine applications for the registration of marks within assigned class of goods or services. The divisions develop the formal sufficiency of applications, determine the registrable merits of marks through search of the prior registrations and application of references, precedent decisions, established rules and procedures, and statutory requirements; allow or reject applications on the basis of their findings, record abandonments; institute interferences proceedings for determining the right to register, and rule on certain motions in connection therewith; and perform related duties.

2—The Trademark Classification and Search Division develops and maintains a system for the classification of goods and services to which marks may be applied, insures the effective application of the system in the examination of applications and the registration of marks, and maintains a digest of registered, published and pending marks, classified according to the characteristics of the marks, to facilitate reference searches by examiners and the public.

SEC. 12. Office of Administration. .01
The Director, Office of Administration, serves as the principal assistant and adviser to the Commissioner on all administrative matters. He is responsible for all administrative functions conducted in support of the substantive operations of the Patent Office, and has direct supervision of the Budget and Finance, Organ-

ization and Methods, Personnel and the General Services Divisions, whose functions are:

1—The Budget and Finance Division provides staff assistance in development, application, and execution of budgetary and fiscal policies and practices; assists in coordination of program plans with financial requirements or resources; prepares budget estimates and aids in their presentation and justification; plans and controls the utilization of operating funds; conducts fiscal operations to account for application or disposition of both operating and revenue funds; administers payroll and leave functions; conducts analyses of income and expense relationships and studies adequacy and propriety of existing or proposed legislative and administrative fees; conducts analyses and evaluations of workload reports and other program performance data with relationship to the bureau's fiscal plan.

2-The Organization and Methods Division conducts studies of organization. functions, methods, workloads, equipment applications, and management practices for the purpose of recommending measures and rendering assistance to achieve improvements in operations: maintains a system for the preparation, control and issuance of all administrative orders and instructions; prepares all organization and function charts and statements: maintains a comprehensive forms management program; plans and coordinates the operation of internal management data reporting systems; advises and assists in the production and issuance of publications and the procurement of printed material, with responsibility for administering related standards and policies; plans, coordinates and assists in the conduct of studies relative to the application of data processing equipment to Patent Office operations: and conducts a records management program, including the protection of vital records.

3—The Personnel Division plans and directs the execution of approved policies and programs relating to recruitment, placement, promotions, employee relations, retrenchment, compensation, executive development, training, incentive awards and personnel transactions and records; conducts individual employee utilization and employee performance rating programs; and plans and administers a position classification and

wage administration program.

4-The General Services Division reviews new patent applications for compliance with requirements as to form prior to consideration by patent examiners; inspects drawings submitted in applications to insure conformance with requirements as to formal execution; prepares allowed applications for printing and issues patent grants; records instruments transferring property rights in patents and trademarks and furnishes abstracts of title; maintains dockets of inter partes patent cases and of appeals to the Court of Customs and Patent Appeals; provides punch card accounting and documentation services; prepares and furnishes copies of Patent Office records; procures, stores and sells printed

copies of patents and trademarks; answers correspondence of a general nature; provides the routine service and supply needs of the Office; and maintains a Scientific Library, including a search room for the use of the public in searching and examining United States patents, and a library of scientific publications and a comprehensive file of foreign patents for use by Patent Office examiners and the public.

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SEC. 13. Office of Information Services. The Director of the Office of Information Services serves as adviser to and represents the Commissioner on public information matters, and subject to the policy direction and guidance of the Public Information Officer, conducts information programs fostering public knowledge of and benefit from the American patent system and the functions and services of the Patent Office: formulates and coordinates the administration of information policies in all activities of the Patent Office concerned with rendering information services and assistance to the public; and, provides for the preparation and dissemination of information releases.

> Frederick H. Mueller, Secretary of Commerce.

[F.R. Doc. 60-25; Filed, Jan. 4, 1960; 8:48 a.m.]

### ATOMIC ENERGY COMMISSION

[Source Material License No. R-174] [Docket No. 40-1341]

### MINES DEVELOPMENT, INC.

### Order Postponing and Setting New Date for Hearing

On December 14, 1959, a Notice was issued, setting a hearing and a pre-hearing conference for January 7, 1960 in a courtroom of the United States District Court building in Denver, Colorado, in the above-entitled matter in respect of the issues prescribed for hearing by the Commission in its Notice issued herein on November 30, 1959.

On December 28, 1959, pursuant to a stipulation between counsel for Mines Development, Inc., and the Staff of the Commission, a pre-hearing conference was held at the Headquarters of the Commission in Germantown, Maryland, to consider evidence proposed to be adduced by Mines Development, Inc., respecting the matters specified by the Commission for consideration. In view of the volume of this evidence and the necessity for extensive review thereof, the Staff of the Commission requested a postponement of the hearing from the date previously designated and by stipulation the date of February 17, 1960 appeared to be the first date available and convenient to both participants.

The Presiding Officer finds: Good cause exists for a postponement of the hearing heretofore set for January 7, 1960 to February 17, 1960.

The Presiding Officer orders:

A. The hearing in this cause to consider the issues prescribed by the Commission shall convene on February 17,

1960 in a courtroom to be assigned in the United States District Court Building, 1823 Stout Street, Denver, Colorado.

B. The order of December 14, 1959 prescribing a hearing and pre-hearing conference in this cause is vacated.

Issued: December 28, 1959.

SAMUEL W. JENSCH, Presiding Officer.

[F.R. Doc. 60-1; Filed, Jan. 4, 1960; 8:45 a.m.]

### FEDERAL POWER COMMISSION

[Docket No. E-6919]

### DUKE POWER CO.

Notice of Application

DECEMBER 29, 1959.

Take notice that on December 21, 1959, an application was filed with the Federal Power Commission pursuant to section 204 of the Federal Power Act by Duke Power Company ("Applicant"), a corporation organized under the laws of the State of New Jersey and doing business in the States of North Carolina and South Carolina, with its principal business office at Charlotte, North Carolina, seeking an order authorizing the issuance of \$50,000,000, principal amount of First and Refunding Mortgage Bonds . % Series due 1990. Said Mortgage Bonds will be issued under and pursuant to Applicant's Indenture to Guaranty Trust Company of New York (now Morgan Guaranty Trust Company of New York), Trustee, dated December 1, 1927, as heretofore supplemented and amended by Supplemental Indentures dated September 1, 1947, February 1, 1949, April 1, 1951, January 1, 1955, and May 1, 1956, and a Supplemental Indenture to be made and executed by the Applicant and the bank and to be dated February 1. 1960. Applicant proposes to sell at competitive bidding the afore-mentioned First Mortgage Bonds, which will bear interest from their date at an annual rate to be fixed by competitive bidding payable semi-annually on the first day of February and the first day of August in each year. The proceeds from the sale of the First Mortgage Bonds will be applied and used by Applicant for the purpose of financing in part the cost of construction of additions to its electric generating, transmission and distribution facilities and also for the purpose of reimbursing (in whole or in part) its treasury for expenditures heretofore made and to be made by it for such purpose between September 1, 1959 and February 29, 1960.

Any person desiring to be heard or to make any protest with reference to said application should on or before the 18th day of January 1960, file with the Federal Power Commission, Washington 25, D.C., petitions or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE, Secretary.

[F.R. Doc. 60-8; Filed, Jan. 4, 1960; 8:46 a.m.]

[Docket No. G-20509]

### SOUTHERN NATURAL GAS CO.

### Order Providing for Hearing, Suspending Proposed Revised Tariff, and Fixing Date of Hearing

**DECEMBER 24, 1959.** 

Southern Natural Gas Company (Southern) on November 25, 1959, tendered for filing its FPC Gas Tariff, Sixth Revised Volume No. 1, proposed to become effective on January 1, 1960, and providing for an annual increase in its rates and charges of \$7,756,563, or 8.3 per cent, to its jurisdictional customers, based upon sales for the year ended June 30, 1959, as adjusted.

In support of its proposed increased rates, Southern relies upon claimed increases in the cost of purchased gas due to shifts in sources of supply to higher priced gas and increased rates of its existing suppliers, increased operating expenses, increased plant investment, depreciation and ad valorem taxes, and the need for a rate of return of 7.0 per cent with associated increased income taxes.

Southern's statements, relating to its estimated volumes to be purchased from each source of gas supply, are inadequate to permit a ready analysis of its adjustments to actual test year takes from each source. Furthermore, a number of Southern's suppliers' increased rates are now before the Commission subject to possible refunds. Southern's estimated reduction in its own gas production and exchange receipts may be inappropriate, particularly in light of the substantial expansion of its production and gathering facilities and investment.

Numerous other questions arise from Southern's filing. Among them are: Southern's computation of its rate base and methods used; the crediting of Federal Income Tax accruals to working capital allowances; exploration and development expense; increased rate of return (7 per cent) over that allowed in Docket No. G-13258 (6 percent); treatment of Federal Income Tax deductions for depletion and intangible well drilling expenses; adjusted sales volumes based upon anticipated operation of new facilities not yet completed; cost allocations between jurisdictional and nonjurisdictional customers and between various rate zones; and the level of the demand and commodity components of the rates, and the justification for departure from established precedent in the resulting rate "tilt" in favor of high load factor customers.

The increased rates and charges contained in the said Sixth Revised Volume No. 1 tendered by Southern on November 25, 1959, have not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act, that the Commission enter upon a public hearing concerning the lawfulness of the rates, charges, classifications, and services contained in Southern's FPC Gas Tariff, Sixth Revised Volume No. 1 and that said revised tariff and the rates contained therein be suspended and the use thereof deferred as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 15 thereof, the Commission's rules of practice and procedure and the regulations under the Natural Gas Act (18 CFR, Ch. I), a public hearing be held commencing on January 26, 1960, at 10:00 a.m., e.s.t., in a hearing room of the Commission, 441 G Street, NW., Washington, D.C., concerning the lawfulness of the rates, charges, classifications, and services contained in Southern's FPC Gas Tariff, as proposed to be amended by Sixth Revised Volume No. 1 tendered for filing on November 25, 1959.

(B) Pending such hearing and decision thereon Southern's FPC Gas Tariff, Sixth Revised Volume No. 1 is hereby suspended and the use thereof deferred until June 1, 1960, and until such further time as it may be made effective in the manner prescribed by the Natural Gas Act.

(C) Southern shall serve copies of its prepared testimony and exhibits proposed to be offered as its direct case on or before January 8, 1960, upon all parties of record of that date and upon Commission Staff counsel (five copies) and shall make copies available, as soon as practicable, upon parties thereafter permitted to intervene herein.

(D) Interested State commissions may participate as provided by §§ 1.8 and 1.37(f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37(f)).

By the Commission.

JOSEPH H. GUTRIDE, Secretary.

[F.R. Doc. 60-9; Filed, Jan. 4, 1960; 8:46 a.m.]

# SECURITIES AND EXCHANGE COMMISSION

[File No. 812-1260]

INTEX OIL CO.

Notice of Filing of Application for Order Exempting Transactions Between Affiliates

**DECEMBER 28, 1959.** 

Notice is hereby given that Intex Oil Company ("Intex"), has filed an application pursuant to section 6(c) of the Investment Company Act of 1940 (the "Act") for an order exempting from the provision of section 17(a) of the Act the transaction described below:

The request of Intex is based upon the following representations and information contained in the application.

<sup>&</sup>lt;sup>1</sup> The herein proposed increased rates would be in addition to increased rates which became effective November 1, 1959, subject to refund, in Docket No. G-18512. The latter rates, in turn, are in addition to increased rates which became effective April 16, 1958, subject to further orders of the Commission in Docket No. G-13258.

Intex is a California corporation which is engaged in the exploration and development of oil and gas in western United States, primarily in the States of California and Texas. Prior to the consummation of the transaction for which exemption is sought and which is described below, Intex had outstanding 928,800 shares of capital stock with a par value of 33 ½ cents a share, of which 166,200 shares or 17.89 percent of the total amount of such stock outstanding, was owned by Madison Fund, Inc., a registered closed-end, nondiversified investment company.

On July 29, 1958, Intex purchased from Madison Fund, Inc. 136,000 shares of Intex Capital stock at the price of \$11 a share and paid Madison Fund, Inc. therefor the total sum of \$1,496,000 in cash. Of the 136,000 shares of Intex stock involved in the purchase and sale 119,300 shares were sold by Madison Fund, Inc. for its own account and 16,700 shares were sold by Madison Fund, Inc. for the account of Gas Industries Fund, Inc. (which has been succeeded as a result of merger by Colonial Energy Shares, Inc.), a registered investment company, pursuant to a private agreement between Madison Fund, Inc. and Gas Industries Fund, Inc.; and Madison Fund, Inc. paid to Gas Industries Fund, Inc. the full consideration received by Madison Fund, Inc. for the 16,700 shares of Intex stock sold for the account of Gas Industries Fund, Inc.

Pursuant to the provisions of section 2 (a) (3) of the Act, Intex was an affiliated person of Madison Fund. Inc. at the time of the consummation of the aforesaid purchase and sale of Intex stock. Section 17(a) of the Act prohibits an affiliated person of a registered investment company from purchasing from such registered investment company, any security or property, subject to certain exceptions not pertinent here, unless the Commission by order upon application pursuant to section 17(b) of the Act grants an order exempting such a proposed transaction from the provisions of section 17 (a) of the Act, upon a finding that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned; and that the proposed transaction is consistent with the policy of the investment company concerned, as recited in its registration statement and reports filed under the Act, and is consistent with the general purposes of the Act. Since Intex is an affiliated person of Madison Fund, Inc., the above mentioned transaction came within the prohibitions of section 17(a) of the Act, unless exempted by order of the Com-

Section 6(c) of the Act authorizes the Commission by order upon application conditionally or unconditionally to exempt any transaction from any provisions of the Act or of any rule or regulation thereunder, if and to the extent that the Commission finds that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act.

The application states that the board of directors of Intex considered the question of purchasing Intex stock from Madison Fund, Inc. at three separate meetings during the period April 16, 1958-June 27, 1958, inclusive, and that on the latter date the board of directors authorized the purchase of Intex stock from Madison Fund, Inc., at the price of \$11 a share. On June 27, 1958, 1,300 shares of Intex stock were traded on the American Stock Exchange at prices ranging between 111/4 and 113/8 a share and the closing price on such date was 111/4 a share. During the period June 27, 1958-June 28, 1958, inclusive, a total of 28,900 shares of Intex stock were traded on the American Stock Exchange at prices ranging from 10% to 11% a share; and on July 29, 1958, the date of the consummation of the transaction, 700 shares of such stock were traded on the American Stock Exchange at prices ranging from 10% to 11 a share, the closing price having been 10% on that day.

The application states that neither Intex nor its counsel were aware that Madison Fund, Inc. was a registered investment company or that the transaction was subject to the requirements of section 17(a) of the Act.

Madison Fund, Inc. had acquired its then holdings of Intex stock at various times commencing in April, 1956, and on July 16, 1958, Madison Fund, Inc., owned 166,000 shares of Intex stock (at an average cost exclusive of commissions) of \$9.71 a share. On July 16, 1958, prior to the sale of Intex stock by Madison Fund, Inc. to Intex, the former commenced selling portions of its holdings of Intex stock on the American Stock Exchange in the amounts and at the times and per share prices as follows: July 16, 1958-800 shares at  $11\frac{1}{2}$  and 300 shares at  $11\frac{5}{8}$ ; July 17, 1958—200 shares at  $11\frac{1}{2}$ . On October 1, 1958, subsequent to the consummation on July 29, 1959 of the transaction for which exemption is sought, Madison Fund, Inc. sold 20,000 shares of Intex stock at \$11 a share; and during the period October 2, 1958-September 29, 1959, Madison Fund, Inc. sold a total of 21,300 shares of Intex stock at prices ranging from  $9\frac{1}{2}$  to 12 a share.

The application states that the terms of the transaction described above are reasonable and fair and do not involve overreaching; that the transaction is consistent with the policy of Madison Fund, Inc.; and that exemption from the provisions of section 17(a) of the Act is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than January 14, 1960, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission should

order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington 25, D.C. At any time after said date, as provided by Rule O-5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the showing contained in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

By the Commission.

[SEAL]

ORVAL L. DuBois, Secretary.

[F.R. Doc. 60-17; Filed, Jan. 4, 1960; 8:46 a.m.]

[File No. 24SF-2501]

### WILLIAM H. LADLEY

Order Temporarily Suspending Exemption, Statement of Reasons Therefor, and Notice of Opportunity for Hearing

**DECEMBER 28, 1959.** 

I. William H. Ladley, an individual, filed with the Commission on May 22, 1958 a notification on Form 1-A and an offering circular, and subsequently filed amendments thereto relating to an offering of preincorporation conditional subscription agreements for the sale of 24,000 shares of Class B common stock of Produce Marketers, at a par value of \$2.50 per share, in the aggregate of \$60,000 for the purpose of obtaining an exemption from the registration requirements of the Sacurities Act of 1933, as amended, pursuant to the provision of section 3(b) thereof and Regulation A promulgated thereunder.

II. The Commission has reasonable cause to believe that the terms and conditions of Regulation A have not been complied with in that the issuer has failed to file reports on Form 2-A as required by Rule 260 of Regulation A and has failed to file revised offering circulars as required by Rule 256(e) despite requests of the Commission's staff for such filing.

III. It is ordered, Pursuant to Rule 261(a) of the general rules and regulations under the Securities Act of 1933, as amended, that the exemption under Regulation A be, and hereby is, temporarily suspended.

Notice is hereby given, that any person having any interest in the matter may file with the Secretary of the Commission a written request for a hearing within thirty days herefrom; that, within twenty days after receipt of such request, the Commission will, or at any time upon its own motion may, set the matter down for hearing at a place to be designated by the Commission for the purpose of determining whether this order of suspension should be vacated or made permanent, without prejudice. however, to the consideration and presentation of additional matters at the hearing; and that notice of the time and

place of said hearing will be promptly given by the Commission. If no hearing is requested and none is ordered by the Commission, the order shall remain in effect unless or until it is modified or vacated by the Commission.

By the Commission.

[SEAL]

ORVAL L. DUBOIS, Secretary.

[F.R. Doc. 59-11164; Filed, Dec. 31, 1959; 8:45 a.m.1

### INTERSTATE COMMERCE **COMMISSION**

### FOURTH SECTION APPLICATIONS FOR RELIEF

**DECEMBER 30, 1959.** 

Protests to the granting of an application must be prepared in accordance with Rule 40 of the General Rules of Practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

#### LONG-AND-SHORT HAUL

FSA No. 35924: Fertilizers to St. Louis, Mo., and East St. Louis, Ill. Filed by O. W. South, Jr., Agent (SFA No. A3884), for interested rail carriers. Rates on fertilizers, in carloads from points in Louisiana and Mississippi to St. Louis, Mo., and East St. Louis. Ill.

Grounds for relief: Establishment of depressed rates to meet barge competition.

Tariff: Supplement 58 to Southern Freight Association, Agent, tariff I.C.C.

FSA No. 35925: Substituted service-Seaboard Air Line Railroad Company. Filed by Southern Motor Carriers Rate Conference, Agent (No. 16), for interested carriers. Rates on property loaded in trailers and transported on railroad flat cars between Savannah, Ga., on the one hand, and Jacksonville, Miami, Orlando, and Tampa, Fia., on the other, on traffic originating at or destined to points in the territories described in the application.

Grounds for relief: Motor-truck competition.

Tariff: Supplement 1 to Southern Motor Carriers Rate Conference, Agent, tariff I.C.C. 33.

FSA No. 35926: Lime in Southern Territory. Filed by O. W. South, Jr., Agent (SFA No. A3888), for interested rail carriers. Rates on lime, in carloads from points in southern territory and adjacent points to points in southern territory.

Grounds for relief: Short line distance formula and grouping.

Tariff: Supplement 123 to Southern Freight Association, Agent, tariff I.C.C.

FSA No. 35927: Copper products to Official Territory. Filed by Trans-Continental Freight Bureau, Agent (TCFB No. 364), for interested rail carriers. Rates on copper products, in carloads from points in Arizona and Mexico to points in official territory.

Grounds for relief: Market competition.

Tariff: Trans-Continental Freight Bureau, Agent, tariff I.C.C. 622, Western Trunk Line Committee, Agent, I.C.C. A-4299

By the Commission.

[SEAL]

HAROLD D. McCoy, Secretary.

[F.R. Doc. 60-19; Filed, Jan. 4, 1960; 8:47 a.m.1

[Notice 243]

### MOTOR CARRIER TRANSFER **PROCEEDINGS**

**DECEMBER 30, 1959.** 

Synopses of orders entered pursuant to section 212(b) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part

179), appear below:

As provided in the Commission's special rules of practice any interested person may file a petition seeking reconsideration of the following numbered proceedings within 20 days from the date of publication of this notice. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC 62598. By order of December 28, 1959, The Transfer Board approved the transfer to Wm. Penn Highway Express, Inc., Stowe, Pa., of Certificate in No. MC 76191, issued June 14, 1941, to Joseph Baldasano, doing business as Wm. Penn Highway Express, Pottstown, Pa., authorizing the transportation of: General commodities with the usual exceptions including household goods and commodities in bulk, between Pottstown, Pa., and Philadelphia, Pa.; and, Point from Pottstown, Pa., to Baltimore, Md., Washington, D.C., New York, N.Y., and specified points in Long Island, N.Y., New Jersey, Pipe fitting, from Stowe, Pa., to New York, N.Y., and specified points in New Jersey, and Shirts from Pottstown, Pa., to New York, N.Y. Raymond A. Thistle, Jr., 811-819 Lewis Tower Bldg., 225 S. 15th St., Philadelphia 2, Pa., for applicants.

No. MC-FC 62752. By order of December 23, 1959, The Transfer Board approved the transfer to Arthur L. Lea-Mond, doing business as LeaMond's Express, 475 Valley St., Maplewood, N.J., of Certificate No. MC 42407, issued June 29, 1959, to Edward J. LeaMond and Arthur L. LeaMond, doing business as LeaMond's Express, 475 Valley St., Maplewood, N.J., authorizing the transportation of: Household goods, between points in Essex, Hudson, Union, and Morris Counties, N.J. on the one hand, and, on the other, points in New Jersey, New York, Pennsylvania, Connecticut, Massachusetts, and Rhode Island.

No. MC-FC 62764. By order of December 24, 1959, The Transfer Board approved the transfer to Washington-

Union-St. Louis Bus Co., A Corporation, Washington, Mo., of Certificate in No. MC 58482 Sub 1, issued January 16, 1946. to Fred J. Prost, doing business as Louisiana Motor Coaches, St. Louis, Mo., authorizing the transportation of: Passengers and their baggage, and express, newspapers and mail in the same vehicle with passengers, over regular routes, Between St. Louis, Mo., and Hannibal, Mo. Joseph R. Nacy, 117 West Jefferson City, Mo., for High St., applicants.

No. MC-FC 62766. By order of December 23, 1959. The Transfer Board approved the transfer to Broz Express. Inc., Springfield, Mass., of Certificate No. MC 28331, issued November 13, 1950, to William H. Woodruff, doing business as Broz Express, Springfield, Mass., authorizing the transportation of: General commodities, excluding household goods, commodities in bulk, and other specified commodities, between Springfield, Mass., and Chester, Mass., serving all intermediate points on U.S. Highway 20. William L. Mobley, 1694 Main St., Spring-

field 3, Mass., for applicants.

No. MC-FC 62767. By order of December 23, 1959, The Transfer Board approved the transfer to Dean E. Greear and G. C. Wolff, A Partnership, Doing business as Greear and Wolff, Chiloquin, Oregon, of a Certificate in No. MC 114370, issued September 30, 1954, in the name of M. M. Valentine and Roscoe G. Lilly, a partnership, doing business as Lilly & Valentine, authorizing the transportation of lumber, other than plywood or veneer over irregular routes, between points in Klamath County, Oregon, on the one hand, and, on the other, points in Siskiyou County, Calif. R. B. Maxwell, 538 Main Street, Klamath Falls, Oregon for applicants.

No. MC-FC 62769. By order of December 24, 1959, The Transfer Board approved the transfer to Kniffin Transfer Co., a Corporation, Miami, Florida, of the operating rights in Certificate No. MC 10499, issued to Mary B. Kniffin, doing business as Kniffin Transfer Company, Miami, Florida, authorizing the transportation, over irregular routes, of general commodities, excluding household goods and commodities in bulk, between Miami, Fla., on the one hand, and, on the other, points within 10 miles of Miami, including Miami, and structural steel, copper cable, boats, piling, trees, telephone poles, and heavy machinery requiring specialized handling or rigging because of size or weight, between points within 25 miles of Miami, Fla., including Miami. R. P. Terry, 543 Ingraham Bldg.,

Miami 32, Fla., for applicants. No. MC-FC 62773. By order of December 23, 1959, The Transfer Board approved the transfer to Capital City Transfer Co., Salem, Oreg., of Certificate No. MC 64048, issued May 23, 1949, to Russell E. Pratt and Alice L. Pratt, doing business as Capital City Transfer Company, Salem, Oreg., authorizing the transportation of: Household goods and general commodities, excluding commodities in bulk, and other specified commodities, between points in Marion and Polk Counties, Oreg., on the one hand, and, on the other, Salem, Oreg.;

and household goods, between Salem, Oreg., on the one hand, and, on the other, points in Washington, and between Salem, Oreg., on the one hand, and, on the other, points in Clackamus, Yamhill, Tillamook, Linn, Lane, Lincoln, and Benton Counties, Oreg. John G. McLaughlin, 624 Pacific Building, Port-

land 4, Oreg., for applicants. No. MC-FC 62785. By order of December 28, 1959, The Transfer Board approved the transfer to Mattie Harwell Old, RR #1, Lawrenceburg, Tenn., of Certificates Nos. MC 10168 and 10168 Sub 3, issued February 3, 1941 and October 16, 1951, respectively, to W. T. A. Harwell, RR #2 Ethridge, Tenn., authorizing the transportation of: Newspapers from Nashville, Tenn., to Florence, Ala., and from Lawrenceburg, Tenn., to Pulaski, Tenn., serving all intermediate points on designated highways, for delivery only; Films and associated commodities, between Nashville, Tenn., and Pulaski, Tenn., serving all intermediate points on designated highways; Films and associated commodities and newspapers, between Pulaski, Tenn., and Nashville, Tenn., serving all intermediate points on designated and the off-route point of Eagleville, Tenn., and between Pulaski, Tenn., and Columbia, Tenn., serving all intermediate points on designated highways, except Fayetteville, Tenn.

No. MC-FC 62795. By order of December 23, 1959, the Transfer Board approved the transfer to Dick's Moving Service, Inc., Portsmouth, New Hampshire, of the operating rights in Certificate No. MC 29779 and Permit No. MC 103377 Sub 1, issued to John M. Fullford and Richard A. Dufton, a Partnership, doing business as Dick's Moving Service, Portsmouth. New Hampshire, authorizing the transportation over irregular routes, as a common carrier, of household goods, between Kittery, Maine, and Portsmouth, N.H., on the one hand, and, on the other points in Maine, New Hampshire, and Massachusetts, and between Kittery, Maine, and Portsmouth, N.H., on the one hand, and, on the other, points in Vermont, Rhode Island, and Connecticut, and as a contract carrier, of

such merchandise as is dealt in by retail department stores, from Portsmouth, N.H., to points within 25 miles thereof in Maine and Massachusetts, and damaged, refused, rejected, or returned shipments, of the last named commodities, from points within 25 miles of Portsmouth, N.H., in Maine and Massachusetts, to Portsmouth, N.H. Andre J. Barbeau, 795 Elm Street, Manchester, N.H., for applicants.

No. MC-FC 62804. By order of December 23, 1959, the Transfer Board approved the transfer to Gene W. Pederson. doing business as Pederson Trucking Service, Rock Falls, Wisconsin, of a Certificate in No. MC 47585, issued February 19, 1942, to Howard Penden, Menomonie, Wisconsin, authorizing the transporta-tion of specific commodities from and to specified points in Wisconsin and Minnesota. W. P. Knowles, Doar & Knowles, New Richmond, Wisconsin, for applicants.

No. MC-FC 62815. By order of December 29, 1959, the Transfer Board approved the transfer to Joseph E. Peeters and Robert J. Peeters, doing business as Peeters & Sons, San Francisco, Calif., of Certificate No. MC 66152 Sub 1, issued October 14, 1957, to W. L. Irey, doing business as Irey Moving & Storage Co., Lodi, Calif., authorizing the transportation of: Household goods, between Lodi, Calif., and Sacramento, Calif., and between points within 25 miles of Lodi, Calif., including Lodi. Pete H. Dawson; 1261 Drake Ave., Burlingame, Calif., for applicants.

HAROLD D. McCOY. [SEAL] Secretary.

[F.R. Doc. 60-20; Filed, Jan. 4, 1960; 8:47 a.m.]

### FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 29, 1959.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within

15 days from the date of publication of this notice in the FEDERAL REGISTER.

### LONG-AND-SHORT HAUL

FSA No. 35920: Ground barite to Opelousas, Louisiana. Filed by Southwestern Freight Bureau, Agent (No. B-7709), for interested rail carriers. Rates on ground barite, in carloads from points in Arkansas and Missouri to Opelousas, La.

Grounds for relief: Market competi-

tion with Houston, Tex.

Tariff: Supplement 23 to Southwestern Freight Bureau, Agent, tariff I.C.C. 4304.

FSA No. 35921: Steel sheet from Chicago district points. Filed by Illinois Freight Association, Agent (IFA No. 83), for interested rail carriers. Rates on lithographed steel sheet, in carloads from points in the Chicago district to Baton Rouge and New Orleans, La.

Grounds for relief: Market competi-

tion with Texas gulf ports.

Tariff: Supplement 23 to Illinois Freight Association, Agent, tariff I.C.C. 907

FSA No. 35922: Iron and steel articles from Chicago district points. Filed by Illinois Freight Association, Agent (IFA No. 84), for interested rail carriers. Rates on iron and steel articles, in carloads from origins in the Chicago district to Baton Rouge and New Orleans,

Grounds for relief: Barge competition. Tariff: Supplement 23 to Illinois Freight Association, Agent, tariff I.C.C.

FSA No. 35923: Liquid caustic soda to Deep Run Spur, Virginia. Filed by O. W. South, Jr., Agent (SFA No. A3886), for interested rail carriers. Rates on liquid caustic soda, in carloads from points in Alabama to Deep Run Spur, Va.
Grounds for relief: Market competi-

tion with Saltville; Va.

Tariff: Supplement 114 to Southern Freight Association, Agent, tariff I.C.C. 1536.

By the Commission.

HAROLD D. McCoy, [SEAL] Secretary.

[F.R. Doc. 59-11166; Filed, Dec. 31, 1959; 8:46 a.m.1

### **CUMULATIVE CODIFICATION GUIDE—JANUARY**

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